

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order
Issued to All Main Street Electric and
Timothy Barrett

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge M. Kevin Snell on February 27, 28, 29, 2012, and March 1, 2, 5, 6, 7, 8, 9, 2012, at the Office of Administrative Hearings (OAH), 600 North Robert Street, St. Paul, Minnesota. The record closed on May 7, 2012 upon receipt of the final post-hearing submissions of the parties.

Christopher M. Kaisershot, Assistant Attorney General, St. Paul, MN, appeared for the Department of Labor and Industry (Department). Timothy Barrett (Barrett), Mahtomedi, MN, appeared for himself and on behalf of All Main Street Electric (AMSE) (Barrett and AMSE collectively, the Respondents), without legal counsel.

STATEMENT OF THE ISSUES

Should the Respondents' licenses be revoked, suspended, limited, subject to conditions and/or civil penalties for violations of Minnesota Statutes Sections 326B.33, subds. 12(a) and 14; 326B.35; 326B.36, subd. 4; 326B.082, subds. 2, 11(b)(1), (b)(2), (b)(6) (b)(8) and (b)(9) because the Respondents:¹

1. Failed to secure required permits or inspections in connection with Respondents' licenses;
2. Failed to seek required permits at all, or within the time required by law, including until after work had been completed on homeowners' electrical systems;
3. Understated the value of Respondents' work on permit applications, resulting in underpayment of inspection fees;
4. Allowed unlicensed, unregistered individuals to perform electrical work on Respondents' behalf without direct supervision;

¹ Minnesota Statutes are cited to the 2010 Edition.

5. Provided false and misleading information to the Department;
6. Failed to cooperate with the Commissioner's multiple requests to produce documents; and
7. Demonstrated incompetence, untrustworthiness, or financial irresponsibility in connection with Respondents' licenses and engaged in deceptive or dishonest practices by:
 - a. Failing to correctly test multiple customers' electrical systems in conformity with accepted standards, resulting in misdiagnoses that are unsubstantiated by recognized scientific principles;
 - b. Performing unnecessary work on multiple customers' homes' electrical systems;
 - c. Performing work not in conformity with accepted standards of construction for safety to life and property;
 - d. Charging multiple customers for permits not obtained;
 - e. Refusing to comply with a homeowner's directive to stop working until the home could be inspected;
 - f. Failing to complete work claimed to have been performed and/or overstating the work performed;
 - g. Overcharging for the work done on multiple customers' homes;
 - h. Conducting business in the name of others and creating fictitious invoices using other electricians' names for Respondents' work on multiple customers' homes in order to conceal Respondents' involvement in insurance claims;
 - i. Altering a customer's invoice after it was signed by the customer and acting in an unprofessional and belligerent manner; and
 - j. Encouraging a third party to provide misinformation to the Department about whether he had actually supervised Respondents' unlicensed employees.

The Administrative Law Judge finds that the Respondents committed the violations described above, and concludes that the Licensing Order should be affirmed in part and reversed in part, and modified.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Principles of Electricity and Basic Residential Wiring Systems

1. The properties of electricity are well known and scientifically well established. Electricity flows easily through conductors such as gold, silver, copper, and aluminum. Gold is the better conductor. However, copper is more cost effective and is the principal conductor utilized in the electrical distribution systems of the United States, including residential wiring. The properties and performance of electricity in Minnesota distribution systems is scientifically predictable.²

2. Ohm's Law explains the relationships between voltage (E), resistance (R), and current (I). The unit of electrical resistance is an ohm. The pressure needed to make one amp flow through a conductor having a resistance of one ohm is one volt. $I \text{ (Amperes)} = E \text{ (Volts)} / R \text{ (Ohms)}$. Also: $E = IR$ or $R = E/I$.³

3. Current is the quantity or flow of electricity moving past a point. Current flow is measured as amperage, or amps for short. The larger the conductor, commonly measured as “gauge” in residential wiring, the greater the current may be. A common effect of current flow is heat.

4. Voltage, volts for short, is the electrical force, or pressure, that moves electricity through a conductor. A voltmeter measures the amount of electrical pressure difference between two points being measured. Voltage can exist between two points without current flow.⁴

5. An insulator is any material that prevents, or resists, the flow of electricity. Insulator material includes glass, rubber, and plastic. Insulation is utilized to prevent electricity from flowing to an unintended conductor.⁵ Modern, basic residential wiring consists of copper insulated with plastic, commonly referred to as Romex. Older residential wiring includes copper insulated with cloth.⁶

6. The basic components of a residential electrical system consists of an incoming electrical line service from a utility company transformer, through a metering system (measuring how much electrical energy is being drawn by the home), to a circuit breaker box (or load center). The voltage delivered by the utility company to a residential home is 240 volts. The circuit breaker box is an over-current protective device designed to act as a disconnect means to prevent exposure of a branch circuit in the home to a level of current in excess of the circuit's rated capacity. Depending on the branch circuit, either 220 volts (e.g., air conditioning units) or 120 volts (e.g.,

² Testimony of Daniel Choudek, Forensic Electrical Engineer with a Professional Electrical Engineering License; Ex. 58.

³ *Id.*

⁴ *Id.*

⁵ Test. of D. Choudek; Test. of John Schultz, Licensed Master Electrician; Test. of Paul Archambault, Licensed Master Electrician and Forensic Electrical Investigator, Ex. 74.

⁶ *Id.*

receptacle outlet or light socket) is delivered to the branch circuit. Branch circuit Romex wiring consists of three copper conductors insulated from each other. Two wires are the “hot” wires, delivering the alternating current (AC) from the circuit breaker box. The third wire (the white one) is the “neutral” or “ground” wire that provides an adequate return path for the 120-volt appliances and other loads. If the neutral wire is severed, the electricity will seek an unintended path back to the load center (circuit breaker box).⁷

7. Notwithstanding these safeguards, residential electrical wiring that meets legal code requirements is rated up to 600 volts. However, most typical household electronic appliances (e.g., televisions, computers, microwaves, and electronic displays) are not designed to withstand power surges. Neither are receptacles and light sockets rated to 600 volts.⁸

8. Voltage significantly in excess of these ratings creates resistance and heat that can damage the integrity of wiring insulation due to the thermal overload. Thermal overload can also occur due to loose connections at the circuit breaker or elsewhere and from poor workmanship. In any of those instances, the heat can melt connections, and in extreme cases, conductors.⁹

9. Catastrophic power surge events that could cause such damage include lightning strikes and where a utility power line (on the utility side of a transformer) comes in contact with a residential electrical service line (on the residential side of a transformer). It is not possible for a utility side power surge to go through a transformer to the residential service line. The most voltage that can be delivered to a residential home from a utility transformer, even if there is a power surge on the utility side of the transformer, is 240 volts.¹⁰

Lightning and Its Effects of on Residential Electrical Systems

10. Lightning is a naturally occurring, high voltage, electrical arcing event. Arcing is current flow through air. Arcing also emits heat and light. Examples include: a hot wire coming into contact with something that is grounded; and lightning. Lightning is always seeking the most direct path to the ground.¹¹

11. The high voltage of lightning involves thousands or hundreds of thousands of volts. Lightning exceeds the rated capacity of residential Romex wiring. Lightning contact with residential wiring causes the insulation to fail by puncture and will melt grounded objects. Lightning strikes leave consistent and predictable evidence of arcing.¹²

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Test. of D. Choudek and J. Schultz.

¹² *Id.*

12. High voltage damage to wiring causes punctures to the insulation, resulting in an arc. Full-length insulation damage is caused by heat, e.g., from fire, or an overloaded circuit (such as a space heater or a long, coiled up extension cord).¹³

13. A lightning strike on a residence will not itself damage every branch circuit in a home, because it is seeking the most direct and efficiently available path to the ground.¹⁴ For example, if lightning hits a gas fireplace chimney flu (a metal flu going through the attic) it may come down the flu to a galvanized natural gas piping system, to the ground. If the gas supply is corrugated stainless steel, evidence of an arcing event will remain. If the fireplace has a blower, the lightning strike may cause its insulation to be punctured, causing a short circuit.¹⁵

14. The scientifically recognized tool utilized to measure for damage to wiring insulation is a megohmmeter (a “megger”). The megger tries to bridge the gap in weak or damaged insulation. It is capable of impressing various voltage levels (depending on the gauge of the wire) and measures how much current is flowing. It measures the resistance of the line. If insulation is damaged or punctured the measurement will fluctuate from zero (for a direct short) and up. Any measurement less than a gigaohm is suspect. The megger is the scientifically recognized tool utilized to identify wiring that may have been damaged by lightning. Multiple tests, observations and examinations are necessary to determine if damage was caused by lightning.¹⁶

Respondents’ Licensing History

15. On March 23, 1982, the Minnesota State Board of Electricity (“Board”) issued Timothy Barrett (“Barrett”) a Class A Journeyman Electrician license, No. AJ00458. This license allowed him to perform electrical work and supervise unlicensed registered individuals while employed by a licensed electrical contractor or registered employer. Barrett’s journeyman license was valid until March 22, 2012.¹⁷

16. On May 28, 1986, the Board issued Barrett a Class A Master Electrician license, No. AM00285. This license allowed him to perform electrical work and supervise registered unlicensed individuals as an employee of a licensed contractor or registered employer and to be the responsible master electrician for an electrical contractor or registered employer. Barrett’s master license is valid until February 28, 2013.¹⁸

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Test. of D. Choudek.

¹⁶ *Id.*; Test. of J. Schultz; Test. of P. Archambault.

¹⁷ Ex. 69 at Response to Request for Admission No. 14; *see also* Licensing Order at Findings of Fact, ¶ 1.

¹⁸ Ex. 69 at Response to Request for Admission No. 15; *see also* Licensing Order at Findings of Fact, ¶ 2; *see also* Ex. 51 at DLI003007.

17. On April 2, 1998, Barrett, as president and owner of All Main Street Electric ("AMSE"), obtained a Class A Electrical Contractor license, No. CA02963, which was voluntarily terminated on March 1, 2002.¹⁹

18. On August 15, 2001, Barrett, as president and owner of AMSE, obtained a Class A Electrical Contractor license, No. CA03522, for AMSE, which expired on February 28, 2012. The mailing address for this entity is a UPS Store located at 2697 East County Road E, White Bear Lake, MN 55110, and its telephone number is (651) 748-9392. The company's business address is also Barrett's residence.²⁰

"Voltage Drop" and the SureTest Meter

19. Respondents acted and held themselves out to their customers as knowledgeable and competent electricians who could diagnose and repair any or all problems with a home's electrical wiring system, with a particular emphasis on lightning or storm-related damage. Respondents refer to themselves as the "Electrical Doctor."²¹

20. Meters that measure voltage drop, such as the Ideal Sure Test meter, are incapable of identifying the cause of any reported voltage drop in an electrical system. This is significant because voltage drop is a naturally occurring phenomenon that can be increased by a variety of factors including the age of the electrical system, poor workmanship, loose connections, corroded connections (due to moisture), the length of the conductor, the size or gauge of the conductor, the number of devices and connections on a circuit. Each of these factors contributes to voltage drop. The effect is cumulative.²²

21. The Sure Test meter is an excellent, reliable and effective tool for measuring voltage drop. However, it is not designed to and incapable of determining the cause of any voltage drop. Its use also cannot determine if any electrical event is responsible for the voltage drop unless measurements have been taken both immediately before and immediately after the event.²³

22. Voltage drop readings on typical circuits in homes are very predictable and are the result of current flowing through a circuit that includes the resistance of the conductors and connections between conductors and devices. For example, the resistance of #14 AWG copper conductors is .307 ohms per 100 feet. A typical electrical circuit extends from the circuit breaker in the panel along one conductor to the electrical load and returns on the other circuit conductor to the neutral bar in the panel. Using Ohm's Law ($E = I \times R$), the voltage drop (E) is equal to the current (I) times the

¹⁹ Ex. 69 at Response to Request for Admission No. 18; see also Licensing Order at Findings of Fact, ¶ 5.

²⁰ Ex. 69 at Response to Request for Admission No. 19; see also Licensing Order at Findings of Fact, ¶ 6; see also Ex. 51 at DLI003004; Testimony of Chris Williams.

²¹ See, e.g., Ex. 22 (printouts of Respondents' website).

²² See, e.g., Test. of D. Choudek; Test. of J. Schultz; Test. of P. Archambault; Ex. 15 at DLI001643 - DLI001644 (expert report concerning Rising property).

²³ Test. of J. Schultz; Ex. B – the Sure Test manufacturer's Residential Application Guide for Branch Circuit Testing.

resistance (R). In a circuit that includes 100 feet of 14-2 Type NM cable and a cord-and-plug connected 12 ampere load (the maximum continuous load for a 15 ampere circuit), the voltage drop is $12 \times (2 \times .307)$ being 7.368 volts. The percentage voltage drop is 7.368 divided by the circuit voltage (assume 120) being 6.14%, which is over the 5% recommended by the National Electrical Code (“NEC”). This calculation does not take into consideration any factors that would increase the overall resistance of the circuit and resulting voltage drop. These factors include the connection resistance between an attachment plug and the receptacle, the resistance of the conductor connection to the receptacle, resistance of any splices in the branch circuit conductors, the resistance of the connections to the overcurrent device (circuit breaker) and the neutral bar, and the resistance of the overcurrent device.²⁴

23. Respondents incorrectly claimed that the amount of voltage drop is restricted by the NEC as an enforceable code requirement.²⁵ Fine Print Note No. 4 to NEC Section 210.19(A)(1) states the following:

Conductors for branch circuits as defined in Article 100, sized to prevent voltage drop exceeding 3 percent at the farthest outlet of power, heating, and lighting loads, or combinations of such loads, and where the maximum voltage drop at both feeders and branch circuits to the farthest outlet does not exceed 5 percent, provide reasonable efficiency of operation. See FPN No. 2 of 215.2(A)(3) for voltage drop for feeder conductors.

The fine print note in NEC Section 215.2(A)(3) includes the same 3 percent and 5 percent overall reference.²⁶

24. NEC Section 90.5(C) identifies fine print notes as explanatory material and states the following: “Fine print notes are informational only and are not enforceable as requirements of this code.”²⁷

25. The NEC has been referenced as the compliance standard by the Minnesota Electrical Act since 1937. The 1937 edition of the NEC included reference to voltage drop for feeders and stated that voltage drop for feeders “should” not exceed 3%. Section 1103 of the 1937 NEC stated: “Advisory rules are characterized by the use of the word ‘should,’ or are stated as recommendations of that which is advised but not required.” Editions of the NEC up to and including the 2011, which became effective August 1, 2011, have continued to recommend voltage drop parameters, but have not required compliance.²⁸

²⁴ Test. of D. Choudek; Schultz Test.

²⁵ See, e.g., Ex. 14 at DLI001525 - DLI001526; Ex. R (“anything under 98% is a code violation”).

²⁶ See, e.g., Test. of J. Schultz.

²⁷ *Id.*

²⁸ *Id.*

26. In the “frequently asked questions” area of its webpage, Respondents misrepresented facts and law concerning voltage drop by stating, in part, as follows: “This is precisely why insurance companies pay for repairs based off of the readings of a voltage drop test in a home. It is also the law!”²⁹

27. By relying on voltage drop measurements to substantiate damage to the electrical wiring by events such as lightning, open or high resistance neutral connections, open or high resistance phase (hot) conductor, and shorted utility supply conductors, Respondents claim that the resistance of the supply conductors is increased by these events. There is no scientific evidence that the electrical resistance of conductors is affected by an open supply conductor on the utility side of the service point or a high resistance connection to the utility supply conductors. In either of these scenarios, the maximum voltage the circuits would be exposed to would be the maximum voltage of the supply, typically 240 volts. There may be a momentary voltage spike that would exceed the 240 volts, but generally would not be any different than what would be experienced in normal interruptions and restoration of power by removing and replacing the electric meter or switching the primary connection to the transformer supplying the 120/240 system.³⁰

28. Events such as lightning, open or high resistance neutral connections, open or high resistance phase (hot) conductor, and shorted utility supply conductors do not cause voltage drop in the circuitry of an electrical system.³¹

29. Conductor integrity is more likely to be affected by a lightning event than the other events identified above. There may be damage to conductors and connections where a high current resulting from a direct lightning strike is experienced, as well as damage to the conductor insulation. Voltage spikes resulting from nearby lightning strikes may damage electrical appliances and electronic equipment, but can not be assumed to have damaged the electrical circuitry which is typically rated to 600 volts. Although a voltage drop test using the SureTest meter may identify a higher than expected voltage drop, it does not substantiate evidence of conductor damage. Use of a megger is the accepted practice to test wire and cable that have been exposed to mechanical or electrical stress.³²

30. Respondents also neglected to provide any comparison to what the voltage drop would be if calculated for specific circuits by using approximated measurements of the length of the circuit and its resulting resistance, which along with the current in the circuit, are the two primary factors in determining the voltage drop.³³

²⁹ Ex. 22 at DLI002479.

³⁰ Test. of D. Choudek; Test. of P. Archambault; Test. of J. Schultz.

³¹ *Id.*

³² See, e.g., Choudek Test. of D. Choudek; Test. of P. Archambault; Test. of J. Schultz; Ex. 15 at DLI001643 - DLI001644 (expert report concerning Rising property); see *also* Ex. 21 (“Megger” User Guide).

³³ Test. of J. Schultz.

Respondents Engaged In A Pattern Of Misdiagnosing and Overcorrecting Residential Electrical Systems.

31. Respondents repeatedly and incorrectly represented to the public that substantial rewiring of homes was necessary based on their analysis and representations concerning the cause and effect of voltage drop. Respondents gained substantial economic benefit to the detriment of their customers (and insurance companies) by falsely representing that lightning and other electrical events caused voltage drop, that the presence of voltage drop necessitated substantial rewiring of entire electrical systems, and that the charges to remove and replace electrical circuitry under such circumstances were covered losses under homeowner's insurance policies.³⁴

Coverages of Standard Homeowner's Policies

32. State Farm's standard homeowner's policy covers sudden, accidental, and direct physical losses caused by an occurrence, such as lightning or a tree branch falling. Damages included within the scope of insurance coverage for any covered loss must be causally related to the event, as well as reasonable and necessary. Issues such as wear and tear, old age, and poor workmanship are not covered by homeowner's insurance.³⁵

Karlyn Eckman's Residence (Homeowner No. 1):

33. In March 2008, St. Paul homeowner Karlyn Eckman contacted Xcel Energy ("Xcel") after computer equipment failed. Xcel inspected and found damage to the neutral terminal in the electric meter cabinet. The Xcel representative suggested that lightning may have caused the damage, although the representative never inspected the inside of Eckman's home.³⁶

34. Eckman contacted AMSE, who made temporary repairs and assessed repair/replacement of the dual meter socket, two circuit breaker panels, re-wiring to the entire home, GFI receptacles and fixtures, for a proposed cost of \$18,088.00.³⁷ Barrett stated to Eckman that he was accustomed to working with insurance companies and billed her insurer, State Farm, directly for its work.³⁸ On May 5, 2008, State Farm issued a \$17,588 check for the insurance claim, which represented Respondent's invoice, less Eckman's \$500 deductible.³⁹ Thereafter, Eckman's mortgagee issued two

³⁴ See Exs. 1-20; see *also* Ex. 69 at Request No. 2 (acknowledging that they did not know whether any of the homes they worked upon suffered from preexisting voltage drop before they responded to any service call).

³⁵ Testimony of Krista Klecatsky; see *also* Minn. Stat. § 65A.01, subd. 3 (Minnesota Standard Fire Insurance Policy); Ex. 10 at DLI001058 - DLI001065 (Alice Miller's loss adjustment).

³⁶ Testimony of Karlyn Eckman.

³⁷ Ex. 1 at DLI000018.

³⁸ Test. of K. Eckman.

³⁹ *Id.*; Ex. 1 at DLI000049.

checks in payment of the work, the second of which was issued on June 14, 2008, for the “final draw.”⁴⁰

35. Respondents failed to obtain the applicable electrical permit before or at the time they commenced work on March 12, 2008. Thereafter, in August 2008, the city inspector discovered that substantial electrical work had been performed on Eckman’s home by Respondents without a permit or inspection.⁴¹ When Respondents applied for the permit on August 14, 2008, they understated the “estimated value” of their work by listing \$1,888.00 on the application.⁴²

36. In September 2008, the city inspected the work at Eckman’s request and found that a portion of the work did not comply with the NEC. The city contacted Respondents regarding the ordered corrections and the need for re-inspection.⁴³

37. On October 1, 2008, AMSE represented to State Farm that it was “ordered” to ground the receptacles and install a new branch circuit from the basement to the second floor at a cost of \$5,285.70.⁴⁴ This representation was false because the city did not tell Respondents how to correct their deficient work, only that it was impermissible to have ungrounded 3-prong receptacles on the 2nd floor.⁴⁵ Acceptable corrections could have been completed at a minimal cost (and without upgrading the electrical system by extending a new branch circuit that included a grounding conductor from the panel board).⁴⁶ State Farm issued payment for Respondent’s overcorrection of its deficient work on November 11, 2008.⁴⁷

38. When Respondents finally obtained a permit to correct its work on December 31, 2008, they significantly understated the “estimated value” of their work by listing \$220.00 on the application.⁴⁸

39. The problem originally identified by Xcel was a “high resistance” neutral connection in the meter socket. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards. It was highly unlikely that any of the wiring, including panel boards, circuit breakers, circuit wiring, switches, receptacles, incandescent lighting fixtures or lamps would have been damaged by a “high resistance” or “open” neutral condition in the meter socket on the supply side of the building panel boards.⁴⁹

⁴⁰ Ex. 1 at DLI000050 - DLI000052.

⁴¹ Testimony of Dan Jambor; Ex. 1 at DLI000038.

⁴² DLI000039.

⁴³ *Id.*

⁴⁴ Ex. 1 at DLI000019 - DLI000021.

⁴⁵ Test. of D. Jambor.

⁴⁶ *Id.*; Test. of J. Schultz; Ex. 1 at DLI000038 (“The problem could have been corrected by replacing the existing 3-prong receptacles with 2-prong ungrounded receptacles.”).

⁴⁷ Ex. 1 at DLI000043.

⁴⁸ Ex. 1 at DLI000040.

⁴⁹ Test. of J. Schultz.

Steven Harker's and Susan Andre's Residence (Homeowner No. 2):

40. On or about July 31, 2008, St. Paul homeowners Steven Harker and Susan Andre contacted AMSE to find a short in their home's electrical circuits. On August 26, 2008, AMSE submitted a proposal to Harker's and Andre's insurance company, State Farm, for the rewiring of the entire home, as well as the replacement of electrical panels and meter socket. After multiple revisions and supplements, Respondents submitted a final invoice to State Farm claiming that they provided \$31,446.90 of electrical work on the home.⁵⁰

41. Even though Respondents billed and received \$262.00 from State Farm for "permit fees,"⁵¹ Respondents failed to obtain any permits or inspections for the work that they performed on Harker's and Andre's property.⁵²

Julie and Robert Pihart's Residence (Homeowner No. 3):

42. On or about March 12, 2009, the home of Edina residents Julie and Robert Pihart sustained damage. Part of a passing truck struck the overhead electrical service wires that fed their home, pulling down the service mast attached to the house.⁵³

43. Ms. Pihart sought electricians from the Yellow Pages. The Piharts hired Respondents because they were the only electricians that would come out right away. Respondents told the Piharts that the meter socket and panel were destroyed and replaced them that day. Respondents did not file for the required Request for Electrical Inspection until March 31, 2009.⁵⁴ Respondents billed the Piharts \$2,480.00 for the work and wrote "internal circuits need repair" on the invoice.⁵⁵

44. Based on voltage drop measurements, Respondents claimed the incident caused high voltage to surge through the electrical system and necessitated the repair or replacement of 12 or more circuits on the property at an estimated cost of \$13,872.00.⁵⁶ Respondents claimed the work would be covered by their homeowner's insurance, and Respondents' invoice to State Farm stated that these circuits were "damaged" and "need to be repaired and replaced."⁵⁷

⁵⁰ Ex. 2 at DLI000109; *see also id.* at DLI000110 - DLI000115 (first six pages of the invoice).

⁵¹ Ex. 2 at DLI00105 (10/7/08 invoice for \$22,441 and itemizing \$262 for permit fees); Ex. 2 at DLI000099 (1/29/09 invoice listing 10/7/08 invoice as "paid").

⁵² Test. of C. Williams; Ex. 2 at DLI000075.

⁵³ Testimony of Julie Pihart; Exs. 80-81.

⁵⁴ Ex. 3 at DLI000119.

⁵⁵ Test. of J. Pihart; Ex. 82.

⁵⁶ Ex. 3 at DLI000129; *see also* Ex. R ("The room[s] listed need to be repaired as soon as possible."); Test. of J. Pihart.

⁵⁷ Ex. 3 at DLI0001126, DLI000129 (two page facsimile to State Farm from Respondents); *see also id.* at DLI000124.

45. Respondents advised Ms. Pihart to leave the home with any photograph albums and valuables that could be carried due to imminent life safety issues.⁵⁸

46. In an effort to verify Respondents' assessment, Ms. Pihart contacted Doug Torvund, the State Electrical Inspector, who reviewed AMSE's work and the circuits that Respondents suggested were damaged. Respondents had installed the panel, but removed arc-fault circuit-interrupter circuit breakers and replaced them with regular breakers. Arc-fault breakers are considerably more expensive and that Respondents' installation of regular breakers did not comply with the NEC. Torvund was familiar with the previous remodeling project because he had inspected that work.⁵⁹

47. Torvund recommended the Piharts obtain a second opinion about the purported damage and need to replace the circuits. Respondents' theory was unusual because Torvund had never observed damage to internal circuitry as a result of the external overhead wires being pulled down. Torvund suggested that the Piharts contact an electrician who would test their system with a megger.⁶⁰

48. The Piharts' substitute electrician determined that the electrical circuits had not sustained the damage that Respondents represented to the Piharts and State Farm. Rather, the electrician concluded that several receptacles needed replacement due to wear and tear and, moreover, that repairs were needed to remedy Respondents' faulty and noncompliant work. The cost of the second electrician's assessment was \$225.00, and the total estimate to replace the worn receptacles, install a sub-panel, reinstall the arc-fault circuit-interrupter circuit breakers, and check the panel that had been installed by Respondents was \$1,404.00.⁶¹

49. The Piharts declined to authorize Respondents to repair or replace their circuits. To date, the Piharts have not had the circuits at issue repaired or replaced and they continue to functionally operate without any problems.⁶²

Lor Xiong's and Mee Vang's Residence (Homeowner No. 4):

50. In approximately May 2009, St. Paul homeowners Lor Xiong and Mee Vang experienced an electrical event and called AMSE, who opined that their electrical system was damaged by lightning. Respondents sent Xiong's and Vang's homeowner's insurance company, State Farm, a \$4,636.00 invoice on July 2, 2009. Thereafter, on August 20, 2009, Respondents invoiced State Farm an additional \$19,808.40 for electrical work on the property.⁶³

⁵⁸ Test. of J. Pihart.

⁵⁹ Testimony of Douglas Torvund.

⁶⁰ *Id.*

⁶¹ Ex. 3 at DLI000130 - DLI000131.

⁶² Pihart Test. of J. Pihart.

⁶³ Ex. 4 at DLI000157 - DLI000163.

51. Respondents failed to obtain any permits or inspections for the work that they performed on Xiong's and Vang's property.⁶⁴

Jon Wheaton's Residence (Homeowner No. 5):

52. In September 2009, a resident of a four-plex in Little Canada contacted the owner/property manager, Jon Wheaton, about electrical issues at the property. Wheaton hired Respondents, who claimed that lightning had burned the neutral and grounding connections in the main service feeding three units of a four-plex. Respondents replaced the panel and performed 3.5 hours of service for \$564.00.⁶⁵

53. While the electrical system appeared to be functionally performing after this work, Respondents suggested that the alleged lightning could have damaged other circuits. Respondents told Wheaton that voltage drop needed to be measured to determine the extent of additional damage. Wheaton told Respondents that he had a \$1,000 deductible and that any work above that would have to be authorized by his insurance company, State Farm.⁶⁶

54. On September 28, 2009, Respondents performed three hours of testing and replaced a meter for \$366.00. Respondents commenced work on the property, and Wheaton presumed that they had obtained authorization from State Farm based on their prior conversations and because he had not authorized Respondents to perform any additional work.⁶⁷

55. On November 13, 2009, Respondents submitted a \$35,519.60 invoice to State Farm, which identified 240 additional hours of labor to replace the breaker, meter socket and wires inside the three of the four units. Thereafter, Respondents were terminated from the project and a substitute electrician was hired.⁶⁸

56. State Farm objected to excessiveness of Respondents' invoice and obtained competitive estimates for the work performed. Respondents ultimately conceded to accept \$24,930.00 from State Farm.⁶⁹

57. Respondents failed to competently or correctly test the electrical systems in conformity with accepted standards. Respondents' claim that lightning damaged the electrical service and branch circuits within 3 of 4 units in the building was unfounded. The claimed damage to branch circuits was inconsistent with electrical principles.⁷⁰

⁶⁴ Test. of C. Williams; Ex. 4 at DLI000142.

⁶⁵ Testimony of Jon Wheaton; Ex. 5 at DLI000171.

⁶⁶ Test. of J. Wheaton.

⁶⁷ *Id.*

⁶⁸ *Id.*; Ex. 5 at DLI000179 - DLI000183.

⁶⁹ Test. of J. Wheaton; Ex. 5 at DLI000213, DLI000217, DLI000219.

⁷⁰ Test. of J. Schultz.

Patricia Goodman's Residence (Homeowner No. 6):

58. In October 2009, Columbia Heights homeowner, Patricia Goodman, reported to her insurance company, State Farm, that her home had experienced storm damage and that she had hired Respondents to perform emergency repairs and assess the damages. Respondents claimed that a tree limb falling on the main service mast caused damage to the electrical system in four rooms of the home.

59. On October 12, 2009, Respondents submitted three invoices to State Farm: the first invoice for \$188.00 was for the restoration of temporary power to the home; the second invoice states that Respondents had repaired or replaced the mast, panel and wiring inside the home for a total cost of \$605.40; and, the third invoice claimed that they replaced a 100 AMP panel and tested circuits for damage for a total cost of \$931.50.⁷¹ On October 28, 2009, Respondents submitted a \$3,835.70 invoice to State Farm for the repair or replacement of the allegedly damaged circuits in the four rooms identified.⁷²

60. Respondents did not file a Request for Electrical Inspection for the work performed on Goodman's property, even though they charged a \$60.50 permit fee on their October 7, 2009 invoice.⁷³

61. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards. The tree limb falling on the service drop did not cause damage to the electrical service panel and branch circuits within the home.⁷⁴

Terrance Meier's Residence (Homeowner No. 7):

62. On or about October 29, 2009, Mahtomedi homeowner Terrance Meier hired Respondents after a tree branch snapped the neutral feeding the main service before the point at which the service conductors connected to the underground service wires supplying the home. Meier is Barrett's neighbor. After Respondents had performed a substantial portion of the electrical work, Meier hired Sheridan Construction, Inc. a/k/a Sheridan Drywall ("SCI") to repair the holes in his drywall and to act as the general contractor on the project.⁷⁵

63. On December 23, 2009, Respondents created an invoice that represented that the "storm damage" caused "high voltage on multi wire circuits and extremely low voltage on other circuits." The total cost of the work performed was \$24,200.00 (\$19,520.00 for labor and \$4,680.00 for parts).⁷⁶ Respondents' invoice was submitted

⁷¹ Ex. 6 at DLI000303 - DLI000305.

⁷² *Id.* at DLI000300 - DLI000302.

⁷³ *Id.* at DLI000304; Test. of C. Williams.

⁷⁴ Test. of J. Schultz.

⁷⁵ Test. of Terrence Meier; Test. of Chad Sheridan.

⁷⁶ Ex. 7 at DLI000312.

by SCI to Meier's homeowner's insurance carrier, State Farm, in conjunction with an insurance claim.⁷⁷

64. On February 15, 2010, Respondents directly submitted a \$32,674.00 invoice to State Farm for the Meier project, inclusive of \$11,466.00 for parts and \$21,228.00 for labor.⁷⁸ On February 24, 2010, Respondents submitted a revised invoice to State Farm that itemized \$27,572.00 for labor between November 4, 2009 and February 18, 2010.⁷⁹

65. On or about February 25, 2010, Respondents submitted a Request for Electrical Inspection to the Department for the work that it had performed between November 4, 2009 and February 18, 2010.⁸⁰

66. On March 15, 2010, based at least in part upon the extensive scope of purported damage claimed by Respondents, State Farm retained Dan Choudek, P.E., of Onsite Engineering & Forensic Services, Inc. (Onsite) to evaluate Meier's electrical system and the circumstances surrounding the service interruption.⁸¹

67. Barrett was present during Onsite's review and claimed that "25,000 volts" had entered Meier's home as a result of this incident. The home's entire electrical system had been replaced and that AMSE did not photograph the alleged damage, retain any wiring or devices, or conduct any meaningful, repeatable or scientific analysis or testing to determine a cause for or the damage they alleged had occurred. The incident caused an imbalance to the electrical system that may have damaged some electronic equipment. Voltage higher than 240 VAC could not have been present on Meier's electrical system and damage to the electrical system insulation could not have occurred as a result of the power interruption incident.⁸²

68. "High resistance" or "open neutral" connection on the supply side of the service panel will generally result in loads (appliances, lights, etc.) supplied by 120-volt branch circuits to be subjected to varying voltages. In a "high resistance" or "open neutral" condition, the loads are connected in series across the 240-volt supply. If the individual loads are equal, the voltage the loads are subjected to is equal, being 120 volts on each. If the loads are not equal, the voltage on the individual loads will vary directly based on the load's impedance (resistance). The load with the higher resistance will be subjected to a voltage higher than 120 volts and the load with the lower resistance will be subjected to a voltage lower than 120 volts, and the total will not exceed 240 volts. This will, for example, cause lights in the home to burn brighter or dimmer depending on their individual resistance.⁸³

⁷⁷ Ex. 7 at DLI000309 - DLI000313.

⁷⁸ Ex. 7 at DLI000415 - DLI000419; Test. of C. Sheridan.

⁷⁹ Ex. 7 at DLI000420 - DLI000423; Test. of C. Sheridan.

⁸⁰ Ex. 7 at DLI000319.

⁸¹ Test. of K. Klecatsky; Test. of D. Choudek; Ex. 7 at DLI000424.

⁸² Test. of D. Choudek.

⁸³ *Id.*

69. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards. Respondents' analysis of the scope and cause of the purported damage to the home's electrical system was misdiagnosed and unsubstantiated by recognized electrical principles. Damage to circuit wiring, receptacles and switches was highly unlikely as a result of a "high resistance" or "open" neutral condition, and any actual electrical problems were substantially overcorrected.⁸⁴

70. On May 18, 2010, State Farm sent Respondents letters indicating that their bills submitted for Meier and other policyholders were under investigation, in part, because no opportunity to inspect the alleged damages was provided to the insurer before repairs were initiated or completed.⁸⁵

71. In addition to requesting information on the Meier claim, State Farm requested the name of any other policyholders for whom an insurance claim would be filed, and that Respondents provide notice to State Farm; and that State Farm expected an opportunity to analyze any purported damage on insurance-related claims prior to the commencement of any repairs. Respondents did not provide the information State Farm requested on the Meier claim.⁸⁶

72. Barrett accused State Farm of causing Respondents to lose \$10,000 on a previous electrical project in which State Farm was the insurer. Barrett stated that he intended to use Meier's project to "make up" the money he claimed to have previously lost. Meier also testified that Brian Barrett performed work on his home without any supervision by Barrett or a journeyman electrician.⁸⁷ Likewise, Brian Barrett, Matthew Barrett and Gabriel Smith completed the work on Meier's home.⁸⁸

73. The amounts paid by State Farm on the Meier claim were paid under "vandalism coverage" and not because Meier had sustained a covered loss resulting from an electrical event.⁸⁹

Tom Williams' Residence (Homeowner No. 8):

74. The Williams' home was built in 1954. Mr. and Mrs. Williams have lived there for 47 years. They had not updated the entire electrical system during the time they have owned the home.⁹⁰

75. Over a period of 10 months to a year prior to November 2009, the Williams experienced fluctuations in the electricity in the home. The lights in various

⁸⁴ *Id.*; see also Ex. 7 at DLI000424 - DLI000429 (Choudek's report).

⁸⁵ Ex. 7 at DLI000451 - DLI000452; Ex. 10 at DLI000917 - DLI000918; Ex. 14 at DLI001532-DLI001533; Test. of K. Klecatsky.

⁸⁶ *Id.*

⁸⁷ Test. of T. Meier.

⁸⁸ Test. of C. Sheridan.

⁸⁹ Test. of K. Klecatsky.

⁹⁰ Test. of Tom Williams. The exception to the lack of updating was a room with electrical upgrades for his wife's "beauty shop." *Id.*

rooms would intermittently go bright and/or dim. Sometimes lights in certain rooms would not work at all. The problem got progressively worse over that period of time. Eventually, a friend persuaded Mr. Williams to have this electrical problem diagnosed.⁹¹

76. Mr. Williams examined the home's meter box and determined that it was hot to the touch.⁹² The meter box was damaged and certain pot metal components were melted. There is evidence of arcing on the meter box.⁹³

77. The most likely cause of the damage to the meter box was a direct short in the raceway, causing loss of the neutral connection, and resulting in localized damage to the meter box only.⁹⁴

78. Mr. Williams hired Respondents after reporting the problem to his insurance company, State Farm.⁹⁵

79. Respondents provided a November 30, 2009, invoice that stated repair work would be performed for a total of \$22,504.00.⁹⁶ Respondents made their assessments based on voltage readings throughout the home.⁹⁷

80. Respondents claimed that the low voltage that Mr. Williams was experiencing created a situation where "4 to 5 times" the amperage was present, which damaged the home's entire electrical system.⁹⁸ Between November 18, 2009 and April 21, 2010, Respondents replaced the mast, meter, service panel, branch circuits and devices throughout the entire home for a total cost of \$31,720.74.⁹⁹

81. Respondents failed to obtain the electrical permit until June 1, 2010, even though they commenced work in November 2009. When they finally applied for the permit, Respondents understated the "estimated value" of their work by listing \$20,000.00 on the application, resulting in underpayment of the inspection fee.¹⁰⁰

82. Respondents did not retain any physical evidence of the damage or provide any photographs to support their assessment of the damages.¹⁰¹ Based at least in part on Respondents' determination of extensive damages and repair costs, State Farm hired Onsite to inspect the home and alleged damaged equipment.¹⁰²

⁹¹ Test. of T. Williams.

⁹² *Id.*

⁹³ Ex. A.

⁹⁴ Test. of J. Schultz and D. Choudek.

⁹⁵ Test. of T. Williams.

⁹⁶ Ex. 8 at DLI000635 - DLI000636.

⁹⁷ Test. of T. Williams.

⁹⁸ Ex. 8 at DLI000646 (1/5/10); see also Ex. 8 at DLI000645 (5/21/10).

⁹⁹ Ex. 8 at DLI000627 - DLI000634.

¹⁰⁰ Test. of C. Williams; Ex. 8 at DLI000647 - DLI000648.

¹⁰¹ Test. of T. Williams; Ex. A. Although, Mr. Williams testified that shortly before the hearing he found a meter box in his garage (Ex. A) and that he believed it was the one that Respondents removed as part of their work.

¹⁰² Test. of K. Klecatsky; Test. of D. Choudek.

83. By the time Choudek inspected the property, the entire house had been re-wired and a new service mast, meter socket, and load center had been installed. Nevertheless, there were four abandoned circuits from the original electrical wiring system that had been disconnected from the panel and would have been in place and connected at the time of the incident. Choudek inspected these circuits, and found that the insulation of the wiring was intact and functional and there was no damage.¹⁰³

84. The situation that caused damage to the meter box would not have caused damage to the interior circuitry as claimed by Respondents. Respondents' statements are not supported by the fundamental laws and principles of electricity or factual evidence. Respondents overbilled for materials in quantity and price.¹⁰⁴

85. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards to diagnose any problems, Respondents' analysis of the scope and cause of the purported damage to the home's wiring was misdiagnosed and unsubstantiated by recognized electrical principles, and any actual electrical problems were substantially overcorrected.¹⁰⁵

86. Mr. Williams did not replace any appliances since this incident occurred, and he never submitted an insurance claim to replace appliances. State Farm provided coverage for "vandalism" for this \$46,803.73 claim in the interest of protecting its insured, Mr. Williams, who would have otherwise been liable to pay Respondents' bills.¹⁰⁶

Jane and James Mason's Residence (Homeowner No. 9):

87. In approximately 1996, Jane and James Mason purchased their Minneapolis home, which had originally been built in 1914, and had not performed any significant electrical upgrades to the property since they moved in. Because of a kitchen fire in 2007, some electrical wiring related to the kitchen circuits could have been replaced.¹⁰⁷

88. Just prior to November 2009 the Mason's were noticing the following electrical problems: the oven was making noises, some lights would go on and off, and a bathroom outlet was emitting smoke. Because of these problems, they hired an electrician to repair an outlet. He opined that the home's electrical switches showed signs of wear-and-tear due to their age.¹⁰⁸

¹⁰³ Test. of D. Choudek.

¹⁰⁴ *Id.*; Schultz Test.; Ex. 8 at DLI000650 - DLI000680 (Choudek's report).

¹⁰⁵ *Id.*

¹⁰⁶ Test. of T. Williams; Test. of K. Klecatsky; Ex. 8 at DLI003213 - DLI003229.

¹⁰⁷ Test. of Jane Mason.

¹⁰⁸ *Id.*; Ex. 9.

89. Just after Thanksgiving in November 2009, Mrs. Mason selected AMSE to check the electrical issues other than the bathroom socket. She contacted AMSE because it appeared in the Yellow Pages and Angie's list and would provide service on weekends. After speaking with Barrett, the Masons selected Respondents for the work.¹⁰⁹

90. Matthew Barrett appeared by himself in response to the service call to Barrett. Matthew Barrett made some repairs and recommended that he return with his father, Barrett, to perform further tests. Respondents concluded, after performing tests with a Sure Test meter, that the entire home sustained lightning damage in October 2009. Thereafter, the Masons filed a claim with their homeowner's insurance company, State Farm.¹¹⁰

91. On December 29, 2009, Respondents submitted a \$28,660.00 invoice to State Farm that stated as follows:

Due to lightning damaged [sic] the following rooms: (all need wiring repaired or replaced) basement family, bar area, bedroom, laundry room, 1st floor-sun room, living room, dining room, kitchen, 2 bedrooms, bath, 3 seasons porch 2 floor-3 bedrooms, bath, hall. This home was wired with knob and tube wiring which has no accessible connections and is extremely time consuming to replace. Home is about 4,400 sq. ft.¹¹¹

92. Knob and tube wiring is obsolete for use in Minnesota. It has not been installed in Minnesota residential construction since the 1930s. Knob and tube wiring consists of a multi conductor cable run within wall or ceiling cavities. The conductor passes through joist and stud drill-holes by way of porcelain insulating tubes, and is supported along its length on nailed-down porcelain knob insulators. Where the conductors entered a wiring device such as a lamp or switch, or were pulled into a wall, they were encased in braided cotton called a loom.¹¹²

93. The Masons eventually hired SCI to be the general contractor on the project. Sheridan testified that Matthew Barrett and Gabriel Smith performed the electrical work on Respondents' behalf and that they occasionally worked without any supervision.¹¹³ The Masons were disappointed with Respondents' service for multiple reasons, including that they moved light switches near the stairs, eliminated outlets without their permission, damaged tiles, hardwood floors and plumbing.¹¹⁴

94. Respondents filed a Request for Electrical Inspection (REI) on February 16, 2010, for the work they performed in December 2009 and January 2010.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; see also Ex. 9 at DLI000682 (indicating that "circuits were under 120" when checked "with a little unit that plugged into the outlets").

¹¹¹ Ex. 9 at DLI000773 - DLI000774.

¹¹² Test. of J. Schultz.

¹¹³ Sheridan Test.

¹¹⁴ Test. of J. Mason; Ex. 9 at DLI000683.

Although, they performed extensive electrical work, Respondents represented on the REI that only 10 new feeder circuits were replaced. Thereafter, Respondents filed another REI on March 31, 2010, for the new service/power supply and 20 new feeder circuits. Respondents' work on both REIs was already completed at the time of each filing.¹¹⁵

95. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards and, as such, their assessment of the scope of damage was unsubstantiated by recognized scientific principles.¹¹⁶

Alice Miller's Residence (Homeowner No. 10):

96. Alice Miller was a 95-year-old woman who resided in Maplewood, Minnesota, and who passed away shortly before the hearing in this matter.¹¹⁷ Miller had lived in her home, which was built in 1960, since 1968. Miller had not had any electrical work performed on her home since she purchased it.¹¹⁸

97. The fuses in the Miller home would blow on a regular basis when Ms. Miller used her microwave oven. Her neighbors would replace them for her.¹¹⁹

98. On or about March 31, 2010, Miller contacted Xcel Energy about an electrical issue with her home. The Xcel technician indicated that there was nothing wrong with the service leading to her home and suggested that she call an electrician.¹²⁰ Miller contacted Respondents and one of Barrett's sons appeared at her home and restored power. Barrett's son told her that his dad would be over shortly. Once Barrett arrived, he went into Miller's basement for five minutes, then returned upstairs and told Miller to contact her insurance company. Miller gave him a business card and Barrett called State Farm's representatives to file a claim on the grounds that the existing wiring had been burnt by lightning.¹²¹

99. Barrett told Miller that her fuses would blow because her refrigerator and microwave were on the same circuit and, thus, Respondents installed a separate circuit.¹²²

100. Respondents issued a \$23,514.18 invoice on May 4, 2010, which indicated as follows:

¹¹⁵ Ex. 9 at DLI00735 - DLI000736; Test. of C. Williams.

¹¹⁶ Test. of J. Schultz.

¹¹⁷ Test. of Ruth Ann Reese.

¹¹⁸ Ex. 10 at DLI000944, DLI000949.

¹¹⁹ Ex. 10 at DLI000949 - DLI000950.

¹²⁰ Ex. 10 at DLI000945 - DLI000946, DLI000951.

¹²¹ Ex. 10 at DLI000926 (3/31/10 invoice), DLI000946 - DLI000947, DLI000951 - DLI000957 (Miller's examination under oath).

¹²² Ex. 10 at DLI000956 - DLI000957; Test. of D. Choudek; Ex. 10 at DLI001023 - DLI001030 (Choudek's report).

Due to storm damage the following equipment was damaged at Miller home: service mast, meter socket, main electrical panel, wires feeding the kitchen [receptacles], kitchen lights, bedrooms, living room, formal dining room, bathroom, hallway, basement family room, laundry room, basement bathroom, garage, outdoor [receptacles]. All damaged circuits needed to be repaired or replaced.¹²³

101. Respondents submitted a Request for Electrical Inspection (“REI”) on May 13, 2010, but underreported the scope of their work on the application. Even though their invoice listed a \$130.50 charge for the permit, the REI underreported a \$69.00 fee.¹²⁴

102. Respondents claimed that the damage was caused by a lightning event occurring on July 9, 2009. Respondents further claimed that, after they started working on Miller’s home, a second lightning strike damaged Miller’s home on April 2, 2010. However, the closest recorded lightning strike on July 9, 2009, was .9 mile away, and that the closest recorded lightning strike on April 2, 2010, was one mile away.¹²⁵

103. State Farm hired Choudek to assess the damage that Respondents claimed existed on the property. Choudek concluded that there was no physical or scientific evidence that the electrical system or appliances in the home suffered damage from a lightning strike or other high voltage event; that the damage observed within the load center of the residence can be attributed to moisture within the load center causing the short circuit of two circuits; and, that the electrical system within the residence did not require replacement as performed by Respondents.¹²⁶

104. Respondents produced wiring for inspection by Choudek that they claimed was removed from Miller’s home. Choudek inspected the wiring and determined that it did not exhibit signs of lightning damage and, instead, suffered from thermal damage unrelated to any lightning event.¹²⁷

105. Respondents failed to competently or correctly test Miller’s electrical system in conformity with accepted standards to diagnose any problems, Respondents’ analysis of the scope and cause of the purported damage to the home’s electrical

¹²³ Ex. 10 at DLI000927.

¹²⁴ Compare Ex. 10 at DLI000800 with Ex. 10 at DLI000931.

¹²⁵ Test. of D. Choudek; Ex. 10 at DLI001027, DLI001037 - DLI001038 (Choudek’s report); see also Ex. 10 at DLI000919 - DLI000920 (Respondents’ bill referencing second lightning strike); *id.* at DLI001009 - DLI001010, DLI001056-DLI001057 (Exhibit 110 to Miller’s examination under oath); *id.* at DLI000974 (Miller’s examination under oath stating that Respondents prepared the complaint that was filed with the Department of Commerce on her behalf and that was marked as Exhibit 110); *id.* at DLI001015 - DLI001017 (State Farm’s response to Department of Commerce).

¹²⁶ Test. of D. Choudek; Ex. 10 at DLI001023 - DLI001030 (Choudek’s report).

¹²⁷ Test. of D. Choudek; Ex. M (wires allegedly from Miller’s home); Test. of P. Archambault (opining that Exhibit M was melted by an undetermined heat source).

system was misdiagnosed and unsubstantiated by recognized electrical principles, and any actual electrical problems were substantially overcorrected.¹²⁸

106. Respondents installed a ceiling fan in a bedroom that did not previously have a ceiling fan. Respondents subsequently invoiced State Farm for this upgrade to Miller's property.¹²⁹ Mrs. Miller was not wealthy and could not afford to pay Respondent's bill if insurance denied coverage.¹³⁰

107. On June 24, 2010, based on Onsite's report, State Farm determined that Miller's insurable loss was \$1,391.00, based on damage that Respondents committed to her property.¹³¹ State Farm has since negotiated a settlement with Respondents on Miller's behalf when it settled another disputed claim. State Farm paid the claim under vandalism coverage based on its determination that it was not related to any lightning event.¹³²

Dali Feng's and Guoyuan Miao's Residence (Homeowner No. 12):

108. Dali Feng and Guoyuan Miao hired Respondent to inspect and assess electrical damage to their home, even though it was not struck directly by lightning. On or about April 24, 2010, Respondents submitted a \$62,190.00 invoice to Feng's and Miao's insurance company, The Travelers, to repair and replace the electrical system.¹³³

109. Travelers disputed the cost of the repairs and hired LWG Consulting, Inc. ("LWG"), to inspect the wiring and determine the validity of AMSE's \$62,190.00 invoice. On July 19, 2010, LWG initially opined that lightning had compromised some equipment and circuits in and around Feng's and Miao's home and that "it is estimated that the cost to improve these circuits will range from \$40,000-\$50,000 depending on the problems found and repairs made."¹³⁴

110. The LWG report was flawed in multiple respects, including that it was based solely on voltage drop readings. LWG conceded in its November 23, 2010, letter to the Department that the July 19 report was based on voltage drop readings obtained from a SureTest meter. LWG acknowledged that "[o]ne reason for high voltage drop is poor connections and poor types of plugs" and that "no physical damage was observed in the house wiring," the low readings "should be investigated further."¹³⁵

¹²⁸ Test. of D. Choudek; Ex. 10 at DLI001023 - DLI001030 (Choudek's report).

¹²⁹ Test. of R. Reese; see *a/s* Ex. 10 at DLI000928 (billing for two ceiling fans).

¹³⁰ Test. of Donald Reese, Miller's son.

¹³¹ Ex. 10 at DLI000999 - DLI001006 (State Farm's 6/24/10 adjustment); see *a/s* Ex. 10 at DLI000972.

¹³² Test. of K. Klecatsky.

¹³³ Ex. 12 at DLI001268 - DLI001279.

¹³⁴ Ex. 12 at DLI002680 - DLI002685.

¹³⁵ Ex. 12 at DLI002662.

111. Respondents failed to competently or correctly test Feng's and Miao's electrical systems in conformity with accepted standards to diagnose any purported problems.¹³⁶

112. Brian Barrett, Matthew Barrett, and Gabriel Smith performed electrical work on Respondents' behalf on this project.¹³⁷

John Gatzlaff's Residence (Homeowner No. 13):

113. John Gatzlaff filed a complaint with the Department concerning Respondents' visit to his home. Sheridan accompanied Barrett and Brian Barrett to Gatzlaff's home during a visit to solicit electrical work, because they were making repairs to a neighbor's home that were caused by lightning.¹³⁸

114. Barrett tested circuits in Gatzlaff's home with a SureTest meter and reported a drop in voltage, which Barrett attributed to lightning that struck the neighbor's home. Barrett claimed the purportedly damaged wiring presented a fire safety issue unless it was replaced and, moreover, that the repair work would be covered by insurance. Gatzlaff contacted his builder, whose electrician inspected the home and concluded that there was, in fact, no problem with the home's wiring. Gatzlaff did not pursue an insurance claim or otherwise hire Respondents to perform any work on his home.¹³⁹

115. Respondents failed to competently or correctly test Gatzlaff's electrical systems in conformity with accepted standards to diagnose any purported problems, and Respondents' analysis of the scope of the purported damage to Gatzlaff's electrical system was misdiagnosed and unsubstantiated by recognized electrical principles.¹⁴⁰

Allen and Emily Taylor's Residence (Homeowner No. 14):

116. On or about May 14, 2010, Bloomington property owners Allen and Emily Taylor hired Respondents to perform emergency service to their home, for which they paid \$188.00. Mr. Taylor indicated that Barrett's future son-in law (*i.e.*, Gabriel Smith) performed the work. The Taylor home was built in 1963 and its electrical system was outmoded.¹⁴¹

117. On or about May 20, 2010, Respondents issued a \$3,423.40 invoice that stated that they had "replaced storm damaged mast, meter socket, 100 amp panel, including grounding the service."¹⁴²

¹³⁶ Test. of J. Schultz.

¹³⁷ Test. of C. Sheridan.

¹³⁸ Test. of John Gatzlaff ; Ex. 13 at DLI001068 - DLI001069; Test. of C. Sheridan.

¹³⁹ Test. of J. Gatzlaff.

¹⁴⁰ Test. of J. Schultz.

¹⁴¹ Test. of Allen Taylor; Ex. 14 at DLI001519; Test. of C. Williams.

¹⁴² Ex. 14 at DLI001520.

118. Barrett told Taylor that his home suffered from storm damage that was sustained in August 2008 and, as such, that further repairs were needed and would be covered by insurance.¹⁴³

119. On or about May 18, 2010, Respondents issued a proposal for submission to the Taylors' insurer, State Farm, that stated as follows:

Due to storm damage the following equipment was damaged at the Taylor home: service mast, meter socket, main electrical panel, wires feeding the kitchen receptacles, kitchen lights, bedrooms, living room, formal dining room, bathroom, hallway, basement family room, laundry room, basement bathroom, garage. All damaged circuits needed to be repaired or replaced.¹⁴⁴ Respondents also contacted Sheridan about SCI potentially performing drywall repair on the project.¹⁴⁵

120. Due to the extensive scope of Respondents' proposed repairs, State Farm hired South Side Electric, Inc. (SSE) to perform an evaluation. Respondents represented to SSE that 13,000 volts or 25,000 volts had entered the home via a tree falling on the power lines in 2008. SSE advised that if AMSE's representation were true, the result would have been that everything that was exposed to this voltage would be immediately damaged or vaporized, as opposed to the residual damage two years later. SSE estimated that the work completed to replace the 100-amp service with permit should cost between \$1,900 - \$2,300.¹⁴⁶

121. SCI hired LWG to assess the condition of the Taylors' electrical system. LWG's technician was unable to correctly test the home with a megohmmeter, and otherwise failed to obtain any verifiable or credible data to support Respondents' representations of storm damage.¹⁴⁷ During the inspection, Barrett reiterated his opinion that the home needed to be rewired per his proposal as part of an insurance claim.¹⁴⁸

122. Onsite also inspected the home and performed laboratory testing of the panel, including performing a megger test on the busses of the load center. Choudek concluded that there was no evidence that the Taylors' electrical system had been subjected to or damaged by high voltage. Choudek observed that any deficiencies with the Taylors' electrical system were related to poor workmanship, age and condition of the electrical devices, such as the receptacles (which are not covered by a homeowner's policy).¹⁴⁹

¹⁴³ Test. of A. Taylor.

¹⁴⁴ Ex. 14 at DLI001521; *see also* Ex. 85 (Taylor's chronology of events, including that "Tim talked to Sherry at SF and explained the cause of the outage" and that State Farm indicated that no additional work should be completed "until an inspection is done.")

¹⁴⁵ Test. of C. Sheridan.

¹⁴⁶ Test. of K. Klecatsky; Ex. 14 at DLI001535 - DLI001536.

¹⁴⁷ Ex. 14 at DLI001537 - DLI001541.

¹⁴⁸ Test. of K. Klecatsky

¹⁴⁹ *Id.*; Test. of D. Choudek; Ex. 14 at DLI001560 - DLI001565 (Choudek's report).

123. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards to diagnose any problems or their cause. Respondents' analysis of the scope and cause of the purported damage to the home's electrical system was misdiagnosed and unsubstantiated by recognized electrical principles. The event that prompted the call to Respondents appears to be related to a loss of one of the ungrounded service conductors on the utility side of the service point, which would have resulted in only the 120-volt circuits connected to the remaining ungrounded service conductor to be operational. This scenario has the same effect of a main fuse blowing and will not result in damage to other circuitry or equipment. Respondents' assertion that the system was subjected to high voltages as a result of the identified event is not supported by electrical theory or scientific principles. Although there may have been damage to the service conductors on the line side of the service disconnect, it is inconceivable that there would have been any damage to the service panel or any branch circuits.¹⁵⁰

124. No additional work was performed after May 20, 2010, and the only invoices paid were for \$188.00 and \$3,460.00 due to Respondents' inability to substantiate the purported damage.¹⁵¹

125. Taylor later sent a note to State Farm that stated as follows:

Thanks for your hand in all of this. That estimate of \$20,000 plus isn't going to happen. The house wiring needs updating but not at this time, and it won't be part of an insurance claim.¹⁵²

126. Respondents did not submit an electrical permit application until May 24, 2010, which listed \$2,500.00 as the job valuation for the work performed on May 14 and 20, 2010.¹⁵³

Wanda Rising's Rental Property (Homeowner No. 15):

127. In early July 2010, tenants of a Fridley rental property owned by Wanda Rising experienced a power outage and contacted their property manager, Don Allard. Mr. Allard directed them to contact Xcel Energy and hire an electrician. Xcel Energy replaced the high resistance connection on July 3, 2010. On the same day, Respondents inspected the electrical system and claimed that it had been damaged by lightning. AMSE charged \$188.00 for the emergency service call.¹⁵⁴

128. Respondents issued a \$3,761.97 invoice dated July 9, 2010, for electrical work performed by Respondents, and a \$2,196.00 invoice dated July 14, 2010, to

¹⁵⁰ Test. of J. Schultz; Test. of D. Choudek.

¹⁵¹ Test. of Klecatsky.

¹⁵² Ex. 14 at DLI001555.

¹⁵³ Ex. 14 at DLI001530 - DLI001531.

¹⁵⁴ Test. of Donald Allard; Test. of Michael Mound; Ex. 15 at DLI001805.

“repair wires damaged by lightning throughout home.” On July 21, 2010, Respondents issued a \$1,312.50 invoice for additional electrical work and the electrical permit.¹⁵⁵

129. Respondents continued to claim that substantial additional electrical work needed to be performed on the property to repair alleged lightning damage and that it would be covered by insurance. As such, Rising’s insurance company, State Farm, hired Paul Archambault, a licensed master electrician, to inspect her electrical system and the work performed by Respondents. During Archambault’s inspection, Barrett spoke of “fried wiring” and explained that the basis of his theory was the SureTest Meter.¹⁵⁶

130. Archambault concluded that the electrical system showed no physical evidence of a lightning strike or storm-related damage. Archambault also concluded that the work performed by Respondents was unnecessary and had caused damage to the electrical system. Respondents charged Rising for specific fixtures, outlets and wiring that had not been replaced.¹⁵⁷

131. Rising did not authorize Respondents to perform any additional work based on the estimated cost and the doubtful nature of its purported necessity.¹⁵⁸

132. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards to diagnose any problems or their cause. Respondents’ analysis of the scope and cause of the purported damage to the home’s electrical system was misdiagnosed and unsubstantiated by recognized electrical principles. There was no evidence of lightning damage on the property. A butt splice that was replaced by Xcel Energy was the source of the problem experienced by the tenant. The butt splice resistance was measured by Archambault and found to be excessive and subsequently identified as the likely cause of the voltage fluctuation reported by the tenant. The high resistance connection at the service point would not have caused any damage to the electrical service panel or any of the structure’s branch circuit wiring, in part, because 240 volts was the highest potential voltage on any circuit and residential circuitry is rated to 600 volts.¹⁵⁹

133. Respondents did not obtain the required electrical permit until October 4, 2010, more than two months after the work was performed and billed (and a little over two weeks after Barrett’s statement to the Department on September 17, 2010).¹⁶⁰

134. State Farm continues to dispute that the property was damaged by lightning and provided coverage for Respondents’ invoices under the vandalism portion of Rising’s policy.¹⁶¹

¹⁵⁵ Ex. 15 at DLI001806 - DLI001811.

¹⁵⁶ Test. of Paul Archambault; Test. of K. Klecatsky; Test. of D. Allard; see *also* Ex. 15 at DLI001643.

¹⁵⁷ Test. of P. Archambault; Ex. 15 at DLI001643 - DLI001668 (Archambault’s report).

¹⁵⁸ Test. of D. Allard.

¹⁵⁹ Test. of P. Archambault; Ex. 15 at DLI001643 - DLI001668 (Archambault’s report); Test. of J. Schultz.

¹⁶⁰ Ex. 15 at DLI001633 - DLI001634, DLI001812.

¹⁶¹ Test. of K. Klecatsky.

Susan and Charles Farley's Residence (Homeowner No. 17):

135. On or about July 27, 2010, the home of Susan and Charles Farley was struck by lightning, knocking out electrical service and starting a small fire. The Farleys hired Respondents to inspect the home and restore power. Respondents reported that all electrical lines were “fried” and the entire electrical system needed to be replaced. Respondents estimated that it would take at least three weeks and cost approximately \$23,000 to complete the work.¹⁶²

136. On July 27, 2010, AMSE asked Mr. Farley to sign an invoice that did not include any line item for an estimated cost. Upon learning that the Farleys were insured through State Farm, Barrett and other AMSE representatives repeatedly disparaged State Farm and stated that the claim would not be paid due to the insurer's supposed fraudulent activities. Thereafter, Respondents engaged in confrontational and unprofessional behavior with Ms. Farley and State Farm concerning the scope of necessary repairs.¹⁶³

137. Mrs. Farley requested Respondents to stop working on the home to allow State Farm's investigators to perform an inspection. Despite her specific directive, Respondents continued to work on her home. Ms. Farley also reported that an AMSE representative cut electrical wires in an area unaffected by the lightning strike.¹⁶⁴

138. At State Farm's request, Archambault inspected the home to determine the extent of damage caused by the lightning. During Archambault's inspection, Barrett spoke of “fried wiring” and explained that the basis of his theory was the SureTest Meter. Archambault determined that, while the home definitely sustained some damage, the full scope of repairs proposed by Respondents was misdiagnosed and unnecessary.¹⁶⁵

139. Ms. Farley eventually terminated AMSE's services; however, Barrett continued to harass Ms. Farley, who contacted the police regarding Barrett's intimidating and threatening behavior. Shortly thereafter, Barrett presented Ms. Farley with a \$4,102.40 bill, which stated that AMSE had performed 28 hours of temporary repair work, including the replacement of the panel and wiring to rooms on two levels of the home between July 27 and July 28, 2010. Included with the bill was the invoice that Mr. Farley had signed, although the dollar amount had since been filled in to match the \$4,102.40 bill to the penny. Ms. Farley reported that Respondents had previously estimated their bill to be in the \$3,000.00 range.¹⁶⁶

¹⁶² Test. of Susan Farley; Ex. 17 at DLI002069.

¹⁶³ Test. of S. Farley.

¹⁶⁴ *Id.*

¹⁶⁵ Test. of P. Archambault; Test. of K. Klecatsky; Ex. 17 at DLI002106 - DLI002125 (Archambault's report).

¹⁶⁶ Test. of S. Farley; Ex. 17 at DLI002063 - DLI002064.

140. Respondents failed to obtain the required electrical permit for the work they performed until October 18, 2010, a month after Barrett's sworn statement to the Department on September 17, 2010.¹⁶⁷

141. Another electrical contractor made the necessary repairs to the Farleys' home for \$1,600.00, including repairing the wires that AMSE severed. Ms. Farley reported that it took less than two days for one worker to restore the electrical system, which did not have to be replaced despite AMSE's representations.¹⁶⁸

142. Respondents failed to competently or correctly test the electrical system in conformity with accepted standards to diagnose any problems or their cause. Respondents' analysis of the scope of the purported damage to the home's electrical system was misdiagnosed and unsubstantiated by recognized electrical principles, and that Respondents performed work that was unnecessary.¹⁶⁹

Respondents Held Themselves Out As Layton Electric, Inc. And Continued To Claim That Voltage Drop Was A Covered Loss Under Homeowner's Insurance

143. Over a matter of months in 2010, State Farm had confronted Respondents about their unsupported opinions and representations concerning the cause and effect of voltage drop on at least seven insurance claims (*i.e.*, Farleys, Meier, Miller, Rising, Taylors, Wheaton, and Williams). In May 2010, State Farm placed Respondents on notice that it expected an opportunity to analyze any purported damage on insurance-related claims prior to the commencement of repairs by Respondents.¹⁷⁰

144. Respondents did not abandon their attempts to secure insurance proceeds to rewire homes based on the presence of voltage drop. Respondents attempted to cloak their involvement on electrical projects in which State Farm was the homeowner's insurance carrier. Respondents accomplished this by conducting business in the name of another, Layton Electric, Inc. ("LEI"), including creating LEI invoices and having Barrett hold himself out as "Tim Johnson."¹⁷¹

145. Chris Layton, the owner of LEI, replied to a *Craigslist* advertisement placed by Respondents, in hopes of finding additional work. Layton met with Barrett in August 2010 to discuss ideas and gave him a business card.¹⁷² The only written

¹⁶⁷ Test. of C. Williams; Ex. 17 at DLI002128.

¹⁶⁸ Test. of S. Farley; Ex. 17 at DLI002071.

¹⁶⁹ Test. of P. Archambault; Ex. 17 at DLI002106 - DLI002125 (Archambault's report).

¹⁷⁰ See Ex. 7 at DLI000451 - DLI000452; Ex. 10 at DLI000917 - DLI000918; Ex. 14 at DLI001532-DLI001533; Test. of K. Klecatsky.

¹⁷¹ Test. of Chris Layton; Test. of Merle Habel; Testimony of Julie Noethe; Test. of C. Sheridan; Exs. 32-41, 60, 64.

¹⁷² Test. of C. Layton; Exs. Exs. 32-41, 60.

evidence of Respondents' relationship with LEI is limited to an email exchange concerning a vague agreement with few terms or conditions.¹⁷³

146. The format, handwriting, and hourly rate on Respondents' invoices are nearly identical to the invoices prepared on behalf of LEI on the Affeldt, Noethe and Wise projects. The only differences between the AMSE's invoices and the LEI invoices are the company name, address and telephone number.¹⁷⁴

147. The telephone number appearing on the LEI invoices -- (612) 390-5242 -- has never belonged to Layton or LEI.¹⁷⁵

148. Tim Imgrund saw Layton at several of the projects at issue in this proceeding. Imgrund did not have personal knowledge about any of the details of the alleged business relationship and did not observe Layton actually performing any electrical work. Imgrund has enjoyed a 20 year long mutually beneficial business relationship with Respondents in his capacity as a drywall contractor.¹⁷⁶

James Affeldt's Residence (Homeowner No. 16):

149. In July 2010, James Affeldt hired Respondents to perform certain electrical work on his home. Respondents provided Affeldt with a \$188.00 invoice, dated July 24, 2010, which he paid via credit card. On July 26, 2010, Respondents changed an electrical panel and issued Affeldt a \$2,025.80 invoice, which included a fee of \$132.00 for a permit. Affeldt paid Respondents in full with cash as directed by Barrett.¹⁷⁷

150. Shortly thereafter Barrett told Mr. Affeldt that AMSE had merged with another company due to the economy. As such, Respondents changed the July 24 and July 26, 2010 invoices to remove the AMSE's name and replace it with the name "Layton Electric Inc." Between July 30, 2010 and August 6, 2010, Respondents performed additional work and multiple invoices were issued under the name "Layton Electric, Inc." Affeldt indicated that Barrett remained involved on the project, that he never met anyone named Layton, and that the electrical workers did not change after Barrett announced the purported merger.¹⁷⁸

151. Affeldt ultimately hired Merle Habel of Habel Electric, LLC (collectively "Habel") to complete the project. Habel obtained an electrical permit for all of the work it performed, as well as the work performed by Respondents.¹⁷⁹

¹⁷³ Ex. 59 at DLI003293 - DLI003294; see *a/so* Ex. 24 at DLI002507 - DLI002508 ("neither Mr. Barrett or All Main Street Electric Inc. have an executed agreement between Layton Electric Inc. with respect to a contractor's license, company name, contracts, proposals, logo and invoices.").

¹⁷⁴ See, e.g., Ex. 16 at DLI0001910, DLI0001919; Ex. 18 at DLI002178 (\$122/hr.).

¹⁷⁵ Test. of C. Layton.

¹⁷⁶ Testimony of Tim Imgrund.

¹⁷⁷ Testimony of James Affeldt; Ex. 16 at DLI001859, DLI001869.

¹⁷⁸ Test. of J. Affeldt; Ex. 16 at DLI001897 - DLI001900.

¹⁷⁹ Test. of J. Affeldt; Test. of M. Habel; Ex. 16 at DLI001884 (9/23/10 electric permit).

152. Similar to Layton, Habel had previously replied to Respondents' *Craigslist* advertisement in hopes of finding additional work. Barrett agreed to take out an advertisement for Habel in exchange for a 5% fee for any work derived from the advertisement. Barrett placed an internet advertisement with *Yellowbook* under the name "Habel Electric, LLC" listing Barrett's own email address,¹⁸⁰ AMSE's website address, and a phone number that did not belong to Habel. Moreover, the "Habel" advertisement placed by Barrett is otherwise virtually identical to advertisements placed by Respondents.¹⁸¹

Steven Wise's Residence (Homeowner No. 18):

153. On or about August 25, 2010, Brooklyn Center homeowner Steven Wise reported to his insurance company, State Farm, that his electrical system had been damaged during a storm. The electrician hired by Wise claimed that the wires were "fried" and needed to be replaced. Wise advised State Farm that he had hired the electrician based on an advertisement in the Yellow Pages, and described the electrician as a "big guy with curly hair." This description generally matches Barrett's appearance. Wise ultimately submitted to State Farm for reimbursement six invoices in the name of "LEI" totaling \$8,425.90.¹⁸²

154. After he initially met with Barrett, Layton did not hear back from him until late-August or early-September 2010, when he received a call from Barrett requesting him to inspect Wise's home. Upon arrival at Wise's home, Barrett handed Layton an estimate completed in the name of Layton Electric, Inc. ("LEI"). Barrett asked Layton to contact Wise's insurance company, State Farm, to discuss the LEI estimate. Layton and Barrett stepped outside to discuss the situation away from Imgrund and Wise.¹⁸³

155. Habel met Barrett at Wise's home and agreed to finish the partially completed electrical work. Habel agreed to call State Farm and testified that Barrett specifically instructed him not to mention the name "Tim Barrett" to the adjuster due to his history with the company. As such, Habel identified Barrett as "Tim Johnson" to the State Farm adjuster. Habel completed the work on the Wise project and obtained a permit on October 20, 2010. However, Habel did not bill Wise for his work and did not receive any compensation.¹⁸⁴

156. On October 21, 2010, State Farm hired Archambault to investigate the re-wiring work on the property. On October 22, 2010, Archambault issued a report that contained the following conclusions:

¹⁸⁰ The ALJ takes judicial notice of the fact that the email address, "traffic72@aol.com," is the email address that Barrett provided to receive email communications in this action.

¹⁸¹ Compare Ex. 86 with Ex. 17 at DLI001962 and Test. of M. Habel.

¹⁸² Ex. 18 at DLI002144, DLI002174 - DLI002176.

¹⁸³ Test. of C. Layton; Test. of T. Imgrund.

¹⁸⁴ Test. of M. Habel; Ex. 18 at DLI002167.

- There were no apparent signs of lightning striking the home or the utility pole serving the home;
- The electrical repairs were selectively made on the basis of simulated voltage drop testing;
- The invoices did not match the actual type and quantity of work that was performed on the property;
- The labor and material charges on the invoices were inflated, such as 150% to 200% of labor rates customarily charged and markups on materials ranging from 100% to 400% above retail;
- The electrical repairs that were made unnecessarily damaged the building finishes and were not installed as required by the NEC; and
- There was no electrical inspection sticker on the panel.¹⁸⁵

Matthew Montain's Residence (Homeowner No. 19):

157. Matthew Montain hired SCI to perform work on his Centerville home after it was struck by lightning. SCI represented that lightning damaged most of the house's wiring system. SCI was instructed by State Farm to obtain estimates from three electrical contractors to support the scope of the purported electrical damage.¹⁸⁶

158. SCI provided three estimates to State Farm, the lowest of which was a \$22,420.00 estimate purportedly from LEI.¹⁸⁷ Sheridan, whose residential building contractor license has since been revoked, testified that he knew of LEI from the Affeldt job and asked it to provide an estimate. Barrett pushed the LEI invoice under Layton's door at home and told him that the police were investigating the Centerville job.¹⁸⁸

159. State Farm hired Archambault to inspect the home. Archambault found that the lightning damage was minimal and the repairs could be performed for \$1,585.00.¹⁸⁹

Dwight and Julie Noethe's Residence (Homeowner No. 20):

160. On or about September 2, 2010, Dwight and Julie Noethe called Respondents for electrical service after their property was struck by lightning. Barrett inspected and told them that their house needed substantial rewiring as a result of the

¹⁸⁵ Test. of P. Archambault; Ex. 18 at DLI002182 - DLI002184 (Archambault's report).

¹⁸⁶ Test. of C. Sheridan; Test. of K. Klecatsky; Ex. 19 at DLI002256 - DLI002259 (SCI's contract).

¹⁸⁷ Ex. 19 at DLI002265 - DLI002266.

¹⁸⁸ Test. of C. Sheridan; Test. of C. Layton; Test. of C. Williams; Ex. 38 at DLI002618; Ex. 40.

¹⁸⁹ Test. of P. Archambault; Ex. 19 at DLI002244 - DLI002253 (Archambault's report).

incident. The Noethes gave Barrett a key to their home (which he later lost) and provided a \$122.00 check made payable to Barrett for that assessment. A claim was reported to the Noethes' insurance company, State Farm, who spoke with Barrett on September 4, 2010, and requested an assessment of the alleged damages.¹⁹⁰

161. On or about September 8, 2010, Barrett gave the Noethes' a \$2,029.25 invoice with the company name of Layton Electric, Inc. ("LEI") for the repair of the garage, living room, second floor, lower level circuits, receptacles and lights. In accordance with Barrett's instructions, the Noethes gave him a \$2,029.25 check made payable to LEI.¹⁹¹

162. Barrett told Mrs. Noethe that a "Tim Johnson" would be running the job on behalf of LEI and, as such, AMSE's name and telephone were crossed off in their daily-planner and replaced with LEI's name and the telephone number of (612) 390-5242. The Noethes believed that LEI was Respondents' subcontractor, but never met anyone named Layton. While the individual who answered LEI's phone number only identified himself as "Tim," she was certain it was Barrett because his voice is distinct and recognizable.¹⁹²

163. While Barrett typically initialed Respondents' handwritten invoices with a "T.B." upon receipt of payment, the LEI invoice was similarly initialed with a "T.J." to reflect payment.¹⁹³

164. On or about September 15, 2010, State Farm received via facsimile a \$11,680.00 proposal on LEI stationary that stated as follows:

Due to lightning strike to home the following circuits need repair, pipe to garage blew into pieces, wire burned throughout the garage and second floor bedroom, first floor kitchen lights, living room receptacles, front outside light, back entry room, and receptacles throughout basement.¹⁹⁴

165. On September 20, 2010, State Farm received an \$11,680.00 invoice on LEI stationary. As directed by Barrett, on September 28, 2010, the Noethes gave him a \$9,710.00 check, payable directly to Barrett and which he cashed the same day.¹⁹⁵

166. On January 12, 2011, Archambault inspected Respondents' work and observed that the alleged damage from the lightning was confined to the garage and related branch circuit. Respondents had removed the physical evidence and, thus, the alleged damages could not be confirmed. Archambault further found that that a

¹⁹⁰ Test. of J. Noethe; Ex. 20 at DLI002419, DLI002423.

¹⁹¹ *Id.*; Ex. 20 at DLI002420.

¹⁹² Test. of J. Noethe.

¹⁹³ Compare Ex. 20 at DLI002422 with Ex. 5 at DLI000172, Ex. 6 at DLI000303 - DLI000304, Ex. 8 at DLI00637, Ex. 10 at DLI000926, Ex. 14 at DLI001520, Ex. 15 at DLI001805.

¹⁹⁴ Ex. 20 at DLI002429, DLI002431.

¹⁹⁵ Test. of J. Noethe; Ex. 20 at DLI002421, DLI002432; Ex. 35 at DLI002588 - DLI002589.

substantial portion of the work that Respondents claimed to have performed was not completed or was overstated.¹⁹⁶

167. Chris Layton neither offered to perform, or performed any work on behalf of the Noethes, nor did he or his company receive payment from Barrett, AMSE or the Noethes.¹⁹⁷

168. On November 11, 2010, Layton's attorney sent Respondents and SCI a letter demanding that they cease and desist from acting or holding themselves out as LEI. Neither Respondents nor SCI responded to the letter from LEI's attorney.¹⁹⁸

169. On March 9, 2012, Respondents refused to take the witness stand and invoked their constitutional right against self-incrimination when called by the Department to provide testimony.¹⁹⁹ Respondents indicated they understood the legal ramifications of their decision, including that an adverse inference could be drawn based on their refusal to testify.

170. Previously, and in any event, in their supplemental responses to the Department's requests for admissions and for every factual allegation relating to the underlying electrical projects, Respondents indicated that they "[c]annot admit or deny, as lacking sufficient information or recollection to form a conclusion."

Respondents' Unlicensed, Unregistered Employees Performed Electrical Work On Respondents' Behalf And Without The Supervision Of An Employee Employed By The Same Employer

171. On October 6, 2010, Guyan Stream met with the Department and provided a sworn statement that he had never been an AMSE employee and, instead, that he and Barrett are friends and do favors for each other. Stream indicated that he would go to Respondents' job sites just so there would be a licensed journeyman electrician present, even though he was not an employee of AMSE. Respondents' workers on these job sites were Matthew Barrett, Brian Barrett and Gabriel Smith.²⁰⁰

172. On December 16, 2010, Stream entered into a Consent Order with the Department that stayed a \$2,000.00 civil penalty on condition that he commit no further

¹⁹⁶ Test. of P. Archambault ; Ex. 20 at DLI002370 - DLI002386 (Archambault's report); Ex. 20 at DLI002430 (LEI invoice).

¹⁹⁷ Test. of C. Layton.

¹⁹⁸ Ex. 39; Test. of C. Layton; Test. of C. Sheridan.

¹⁹⁹ See U.S. Const. amend. V and XIV; see also Minn. Const. art. I, § 7; see also Minn. R. 1400.7300, subp. 6 (2011) ("A party may call an adverse party or a managing agent, or employees or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate that party by leading questions and contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party.").

²⁰⁰ Test. of G. Stream; Test. of C. Williams; Test. of J. Schultz; Ex. 46 (9/23/10 order to appear); Ex. 45 (investigator notes).

violations of the applicable law, including that he may only engage in the duties of journeyman electrician if he is a bona fide employee of the licensed electrical contractor.²⁰¹

173. Between 2007 and 2010, Stream would occasionally drive to Respondents' job sites so there would be a journeyman electrician present when Brian Barrett, Matthew Barrett and Gabriel Smith performed electrical work. Stream did not become an employee of AMSE until sometime in 2011. Barrett told his workers what they were supposed to do and Stream did not actively supervise Respondents' employees.²⁰²

Respondents' Admissions, Failures to Respond, and False and Misleading Representations to the Department

174. After it received a consumer complaint against Respondents' business practices, the Department sent Respondents a request for information via certified and first-class mail on July 29, 2010. The Department requested a complete list of all customers since January 1, 2009, copies of all contracts, bids, estimates and invoices for those customers, and a complete list of all employees, subcontractors and independent contractors that performed work on behalf of Respondents since January 1, 2009.²⁰³

175. On July 30, 2010, Respondents' representatives signed to acknowledge receipt of the certified mailing from the Department.²⁰⁴ On the same day, Barrett supplemented his July 9, 2010 report to the Washington County Sheriff's Department, wherein he claimed that "a UPS envelope w/work documents" had been stolen from his vehicle on June 25, 2010. Barrett's supplement substantially expanded the scope of the alleged theft and specifically added the exact documentation the Department had requested from Respondents.²⁰⁵

176. Respondents' submissions in this proceeding have since attempted to further expand the scope of this alleged theft by claiming that "a majority of AMSE's business records, on paper *and computer flash drives*, were taken from [Barrett's] vehicle."²⁰⁶ Notwithstanding this representation, the original and supplemental police reports do not reference computer flash drives.

177. On August 12, 2010, Respondents provided a written response to the Department, which claimed that AMSE had been a victim of theft and that all of the documentation requested was unavailable. Respondents claimed they were attempting to obtain the information from third-parties and would be providing it to the Department.

²⁰¹ Ex. 45 (Stream's Consent Order).

²⁰² Test. of G. Stream.

²⁰³ Test. of C. Williams; Ex. 31 at DLI002567 - DLI002569 (information request).

²⁰⁴ Ex. 31 at DLI002562 (Barrett's home address) and DLI002564 (AMSE's UPS Store address).

²⁰⁵ Ex. 29 at DLI002538; Test. of C. Williams.

²⁰⁶ See Respondents' Mem. of Law on Motions to Consolidate and to Dismiss, p.1. (10/11/11) (emphasis added).

To date, however, the only substantive information received from Respondents has been information concerning the identity of their purported “employees.”²⁰⁷

178. On September 7, 2010, the Department issued Respondents an Order to Appear, which required them to appear at the Department on September 17, 2010.²⁰⁸ Barrett appeared as ordered, with counsel, and provided a sworn statement. Barrett acknowledged that his sons, Matthew Barrett and Brian Barrett, and his son-in-law, Gabriel Smith, performed electrical work on Respondents’ behalf without the required electrical licensure or registration. Barrett also testified that Respondents used voltage drop measurements obtained from the Ideal SureTest Meter to diagnose and determine the scope of damage caused to residential electrical systems by electrical events such as lightning.²⁰⁹

179. At the end of the September 17, 2010 meeting, the Department provided Barrett with applications for Brian Barrett and Gabriel Smith to become registered as unlicensed electricians. Thereafter, Gabriel Smith and Brian Barrett became registered as unlicensed electricians on October 18 and 25, 2010, respectively. Matthew Barrett had previously registered as an unlicensed electrician on May 24, 2010.²¹⁰

180. In an email chain between September 20 and September 23, 2010, Respondents’ attorney represented to the Department that Jason Tillges (“Tillges”), James Frandsen (“Frandsen”), and Guyan Stream (“Stream”) were journeyman electricians who were employed by Respondents and supervised Matthew Barrett, Brian Barrett, and Gabriel Smith performing electrical work on Respondents’ behalf.²¹¹

181. State employment records indicate that Tillges, Frandsen, and Stream were not employees of Barrett or AMSE during the time that any of the projects relevant to this action were completed.²¹²

182. Frandsen, a master electrician since 1995, met with the Department and provided a sworn statement on September 27, 2010. Frandsen confirmed that he was not an employee of AMSE and did not supervise or perform any work on Respondents’ behalf. Frandsen indicated that in 1989 or 1990, he worked for Respondents for approximately six to eight months.²¹³

²⁰⁷ Ex. 30 (8/12/10 response letter); *see also* Test. of C. Williams; Ex. 26 (email chain concerning identity of purported employees).

²⁰⁸ Ex. 28 (9/7/10 order to appear).

²⁰⁹ Test. of C. Williams; Testimony of John Schultz; Ex. 27 at DLI002526 (investigator’s meeting notes); *see also* Ex. 17 (“[Barrett] also explained the basis of his theory was test results obtained by using an Ideal Sure Test meter to test for voltage drop on the system.”); Ex. 22 at DLI002479 (“The most common test we perform is a measurement of voltage-drop between the electrical panel and the outlets it feeds”).

²¹⁰ Test. of C. Williams; Test. of J. Schultz; Exs. 76-78.

²¹¹ Ex. 26; *see also* Ex. 25 (9/22/10 letter to the Department with attachments, which was included in the email exchange).

²¹² Ex. 53 at DLI002851 - DLI002852 (DEED records for all employees affiliated with Respondents); *see also* Test. of C. Williams; Testimony of James Frandsen; Testimony of Jason Tillges; Testimony of Guyan Stream.

²¹³ Test. of J. Frandsen Test.; Test. of C. Williams; Test. of J. Schultz.

185. Frandsen told the Department that on or about September 21, 2010, which was concurrent with Respondents' attorney's email exchange with the Department, Barrett left a phone message for Frandsen, although Frandsen did not return his telephone call.²¹⁴

186. To establish that he was not affiliated with Respondents, Frandsen volunteered to call Barrett and allow the Department personnel to overhear the conversation. Frandsen called Barrett using the "speaker phone" feature of his cellular telephone in the presence of Department personnel. Barrett admitted that his kids (*i.e.*, Matthew Barrett and Brian Barrett) recently performed electrical work on three jobs without any supervision. Barrett advised Frandsen that he had told the Department that Frandsen worked for AMSE and received payment by exchanging services. Frandsen denied that he was at the three jobs. Barrett acknowledged Frandsen's denial and explained that he had to tell the Department something. Barrett also lied to Frandsen by telling him that the Department obtained his telephone number by grabbing Barrett's cellular phone and scrolling through the numbers when, in fact, Barrett's attorney provided Frandsen's contact information to the Department. Frandsen ended the call by telling Barrett to lose his number.²¹⁵

187. On September 28, 2010, Tillges reported to the Department that he did not work for Respondents in 2009 and 2010. Tillges, who was a journeyman electrician at the time, indicated that Barrett had contacted him around September 14, 2010, and asked for a "favor" by saying that he had been present at a few of Respondents' job sites. Tillges declined to lie on Respondents' behalf.²¹⁶

188. A few days after Barrett's September 17, 2010 meeting with the Department, Barrett placed a second call to Tillges and pleaded with him to lie by saying that he was on one of Respondents' jobs. Once again, Tillges declined Respondents' request to lie on their behalf.²¹⁷

189. On November 16, 2010, the Department sent Respondents an information request that, among other issues, requested (a) copies of all agreements with Chris Layton and Layton Electric, Inc., (b) an explanation for the false and misleading information provided to the Department concerning Messrs. Tillges and Frandsen, and (c) an explanation for Barrett's assertion that the Department touched his telephone at anytime on September 17, 2010.²¹⁸

²¹⁴ *Id.*

²¹⁵ Test. of J. Frandsen; Test. of C. Williams; Test. of J. Schultz; Ex. 47 (investigator notes) *see also* Ex. 26 at DLI002519.

²¹⁶ Test. of J. Tillges; Ex. 49 (Tillges' 9/28/10 letter to the Department); Test. of C. Williams.

²¹⁷ Test. of J. Tillges; Ex. 49 (Tillges' 9/28/10 letter to the Department); Test. of C. Williams.

²¹⁸ Ex. 24 at DLI002510; Test. of C. Williams.

190. On November 29, 2010, Respondents provided a written response to the Department's November 16, 2010 information request. Respondents stated, in part, that:

neither Mr. Barrett or All Main Street Electric Inc. have an executed agreement between Layton Electric Inc. with respect to a contractor's license, company name, contracts, proposals, logo and invoices.

In addition, Respondents disclaimed any ability to respond to the requests concerning Messrs. Tillges and Frandsen, or any alleged assertion by Barrett that the Department had taken his telephone.²¹⁹

191. On April 13, 2011, the Department served Respondents with another information request and provided an April 27, 2011 deadline to respond. Respondents did not respond to the Department's April 13, 2011 information request.²²⁰

192. Due to Respondents' refusal to cooperate with the Department, it obtained evidence from State Farm and other insurance companies via administrative subpoena.²²¹

Procedural Findings

193. On June 23, 2011, the Department served Respondents with a Licensing Order pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2010).²²² In addition, the Department served Respondents with an Order for Summary Suspension pursuant to Minn. Stat. § 326.082, subd. 13 (2010), which suspended Respondents' licenses pending the resolution of the allegations of violations set forth in the Licensing Order.

194. Following a hearing that occurred before the Commissioner during the State government shutdown, on July 18, 2011, the Commissioner rescinded the Order for Summary Suspension and reinstated Respondents' licenses "pending the final disposition of the contested case regarding the Licensing Order issued on June 23, 2011."²²³ The Commissioner explained that he did not believe the Department met its burden of proving a reasonable probability of volitional acts occurring "in the future," and stated that "[m]y decision takes no position on what should be the ultimate outcome of this case."²²⁴

195. On August 19, 2011, a prehearing conference was held in the above-entitled matter before an Administrative Law Judge (ALJ).²²⁵ Upon the ALJ signing a Protective Order issued pursuant to Minn. Stat. § 13.03, subd. 6 (2010), and on the

²¹⁹ Ex. 24 at DLI002507 - DLI002508.

²²⁰ Ex. 23; Test. of C. Williams.

²²¹ Test. of C. Williams; *see also* Ex. 55 (subpoenas to State Farm).

²²² The Department has since withdrawn Conclusion of Law ¶ 23 from the Licensing Order.

²²³ *See* Commissioner's Order, p. 4 (7/8/11).

²²⁴ *Id.* at pp. 5-6 (emphasis in original).

²²⁵ *See* Ex. J (recording of prehearing conference).

record, the Department provided Respondents with a compact disc containing a PDF of its investigative file that had been Bates-stamped DLI000001 - DLI003316. The ALJ also granted Respondents' request for an extended period of time to prepare for the hearing and scheduled the two-week hearing to commence on February 21, 2012.

196. The Scheduling Order issued by the ALJ on September 12, 2011, provided that (a) discovery closed on December 1, 2011, (b) dispositive motions must be filed by December 30, 2011, (c) exhibit lists and witness lists must be exchanged by February 7, 2012, and (d) foundational objections to any written exhibits must be filed by February 14, 2012.²²⁶

197. On November 29, 2011, the ALJ issued the Order on Motion to Compel and on Motions to Dismiss and Consolidate. Specifically, that order:

- (a) (a)denied Respondents' motion to consolidate this proceeding with pending cases against Respondents' employees because the motion was not served on all interested parties;
- (b) denied Respondents' motion to dismiss because they failed to establish that there were no genuine issues of material fact;
- (c) denied Respondents' motion for default because the Department timely responded to their motions to consolidate and to dismiss;
- (d) granted the Department's motion to compel, effective November 1, 2011, because Respondents' objections in their responses to the requests for admissions were unmeritorious, and
- (e) ordered Respondents to respond to the Department's interrogatories and requests for production of documents by December 9, 2011.²²⁷

198. On February 3, 2012, the ALJ issued an order that granted the Department's motion to strike Respondents' invalid objections and to compel further responses to the Department's interrogatories and requests for production of documents within seven calendar days. The ALJ's order further advised that the fact-finder may draw an adverse inference if Respondents invoked their constitutional privilege against self-incrimination at the hearing and that discovery sanctions may be imposed if they failed to comply with the order to compel.²²⁸

199. Respondents' supplemental discovery responses, filed and served by letter dated February 2, 2011, continued to raise invalid legal objections and were otherwise non-responsive. Respondents did not file or serve any further discovery responses in this matter.

²²⁶ Scheduling Order (9/12/11); see also Minn. R. 1400.6950, subp. 2 (2011) (objections to foundation).

²²⁷ Order on Motion to Compel and on Motions to Dismiss and Consolidate (11/29/11), p. 3.

²²⁸ Order (2/3/12).

200. On February 3, 2012, due to a conflict of schedules, the above-entitled matter was reassigned to Administrative Law Judge M. Kevin Snell. Respondents contacted the ALJ that day and requested a scheduling conference and a continuance of at least 30 days to resolve “discovery disputes.”

201. On February 7, 2012, the ALJ issued the Fourth Prehearing Order and Order for Hearing. In relevant part, that order:

- (a) denied Respondents’ request for a continuance because the February 3, 2012 order concluded any remaining discovery disputes;
- (b) required any prehearing motions to be served and filed by February 15, 2012;
- (c) amended the deadline to file and serve exhibit lists and witness lists to February 15, 2012;
- (d) amended the deadline to serve and file foundational objections to written exhibits to February 17, 2012;
- (e) scheduled a February 21, 2012 prehearing conference to discuss any prehearing motions, including any foundational objections; and
- (f) rescheduled the hearing to commence February 27, 2012.²²⁹

202. Respondents did not object to the foundation of the Department’s written exhibits before the February 17, 2012 deadline or anytime before the commencement of the hearing. Once the hearing commenced on February 27, 2012, Respondents repeatedly objected to the foundation of the Department’s exhibits. Those objections were untimely and, thus, they were overruled.²³⁰

203. By letters dated February 7, 10, and 15, 2012, Respondents filed various prehearing motions:

- A. On February 7, 2012, Respondents requested the ALJ to reconsider The ALJ’ order denying their motions to dismiss and for default. These motions were untimely because dispositive motions were required to be filed by December 30, 2011. Moreover, the ALJ’ order, which is the law of the case, appropriately denied these motions and Respondents failed to present any compelling argument to support reconsideration.
- B. On February 10, 2012, Respondents filed a motion *in limine* seeking to preclude two of the Department’s expert witnesses, Daniel Choudek, P.E., and Paul Archambault, from testifying on the grounds that Respondents have “never heard of an Insurance Company providing

²²⁹ Fourth Prehearing Order and Order for Hearing (2/7/12).

²³⁰ See Minn. R. 1400.6950, subp. 2 (2011) (objections to foundation).

free experts to the State of Minnesota.” This motion was denied because it had no basis in law or fact. Messrs. Choudek and Archambault -- who are not employees of an insurance company -- personally investigated many of the homes at issue, oftentimes in the presence of Tim Barrett. Messrs. Choudek and Archambault had personal knowledge about the facts relevant to this case and were qualified through their education and experience to provide expert testimony. Messrs. Choudek and Archambault agreed to provide expert testimony in response to a subpoena and without any special compensation from the Department.²³¹

- C. On February 10, 2012, Respondents moved to continue the hearing and compel discovery based on the assertion that “the State has not answered any of my discovery questions at all.” Respondents’ assertion was incorrect. The Department responded to all of Respondents’ discovery requests in a timely fashion and, moreover, filed its discovery responses in opposition to Respondents’ motion to dismiss.²³² Respondents later conceded that their discovery dispute was with State Farm Insurance Company (“State Farm”) and not the Department. Respondents claimed that State Farm did not respond to their subpoena *duces tecum* served in their civil lawsuit against Chad Sheridan and Terry Meier. Despite the discussions at the August 19, 2011 prehearing conference about obtaining discovery from State Farm and other third-parties in this case, Respondents conceded at oral argument that they “went around” the Department’s attorney to seek discovery from State Farm and did not attempt to secure a subpoena from the Office of Administrative Hearings in this administrative action to obtain such materials.
- D. On February 10, 2012, Respondents moved that the matter be ordered for mediation. “No matter shall be ordered for mediation if the agency or any party is opposed.”²³³ Mediation was not ordered because the Department was opposed on the grounds that it did not believe that mediation would be an appropriate use of limited resources.
- E. On February 15, 2012, Respondents filed a motion *in limine* seeking to preclude the Department from offering any exhibits or witnesses at the hearing on the grounds that Respondents allegedly did not receive the Department’s exhibit list or witness list by the applicable deadline. This motion was denied because the Department’s Witness List and Exhibit List was timely filed and served by email, facsimile, and U.S. Mail. Respondents also failed to argue or otherwise establish that they were prejudiced in any respect by the manner or method in which the

²³¹ See Exs. 57-58, and 74; Test. of D.I Choudek, P.E.; Test. of P. Archambault.

²³² See Affidavit of Charlie Durenberger (10/26/11), ¶ 3 (and attached discovery responses).

²³³ Minn. Rule 1400.5950, subp. 3C (2011).

Department served and filed its prehearing materials. Indeed, the Department previously produced every exhibit bearing a Bates-stamp number to Respondents in discovery on August 19 and October 26, 2011, respectively.

- F. Respondents made several motions to continue the hearing. The ALJ denied these motions because Respondents failed to establish “good cause” for a continuance.²³⁴ Respondents had more than sufficient time to prepare for the hearing or to find substitute counsel if they wished to do so after their first attorney withdrew on or about November 1, 2011. A continuance also would have caused substantial prejudice and hardship to the non-State witnesses who were subpoenaed and made arrangements to set aside their daily routines to participate in this proceeding.
- G. The ALJ denied the Department’s motion to preclude Respondents from calling an expert witness on the grounds of inadequate expert disclosure so long as the requisite disclosures were provided in advance of any expert’s testimony. Respondents, however, did not supplement their inadequate expert disclosures and did not call any expert witness to testify on their behalf at the hearing.

CONCLUSIONS

- 1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondents under Minn. Stat. §§ 14.50 and 326B.082, subd. 8.
- 2. The Respondents received due, proper and timely notice of the charges against them, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.
- 3. The Department has complied with all relevant procedural legal requirements.
- 4. By Executive Order 193, signed May 16, 2005, Governor Tim Pawlenty transferred responsibility for licensing and regulating electricians from the Board of Electricity to the Department. The Legislature later codified the transfer of authority to the Department under Minn. Stat. § 326B.02, subd. 1 (2008).
- 5. The burden of proof in this proceeding is on the Department to show by a preponderance of the evidence that Respondents committed the alleged violations.²³⁵
- 6. The Commissioner of Labor and Industry may request that a person appear to give testimony and produce documents at a time and place indicated by the

²³⁴ Minn. R. 1400.7500 (2011). Minnesota Rules are cited to the 2011 Edition

²³⁵ Minn. R. 1400.7300, subp. 5 (2011).

Commissioner. Persons requested to give testimony or produce documents shall respond within the time and in the manner specified by the commissioner.²³⁶ The Commissioner may deny, suspend, limit, place conditions on, or revoke a person's license or registration if the Commissioner finds that the person failed to cooperate with a commissioner's request to give testimony or produce documents.²³⁷

7. Under the circumstances presented in this case, including the chronology of events, Respondents' repeated misrepresentations to the Department and to third-parties, Respondents request of Tillges and Frandsen to provide misinformation to the Department, and Respondents' refusal to comply with discovery requests and orders compelling discovery, the Respondents' supplementation of their police report from a single envelope to include the entirety of their business records the ALJ finds that Respondents are not credible and that they have not cooperated with the Department's investigation in this matter.²³⁸

8. The Department has proved by a preponderance of the evidence that Respondents failed to cooperate with a Commissioner's request to produce documents as requested on July 29 and September 7, 2010, and April 13, 2011, all in violation of Minn. Stat. § 326B.082, subds. 2 and 11(b)(1) and 11(b)(6).

9. The Department has proved by a preponderance of the evidence that Respondents provided false and misleading information to the Department in connection with their activities as licensees, including without limitation the identity of AMSE's purported "employees," all in violation of Minn. Stat. § 326B.082, subd. 11(b)(2).

10. Effective December 1, 2007, an unlicensed individual shall not perform electrical work required to be performed by a licensed individual unless the individual has first registered with the Department as an unlicensed individual.

Thereafter, an unlicensed individual shall not perform electrical work required to be performed by a licensed individual unless the work is performed under the direct supervision of an individual actually licensed to perform such work. The licensed individual and unlicensed individual must be employed by the same employer. Licensed individuals shall not permit unlicensed individuals to perform electrical work except under the direct supervision of an individual actually licensed to perform such work.²³⁹

²³⁶ Minn. Stat. § 326B.082, subds. 2(a)(3) & 2(b).

²³⁷ Minn. Stat. § 326B.082, subds. 2(a)(3) and 2(b), 11(b)(6).

²³⁸ Test. of C. Williams; Instead of cooperating with the Department, Respondents filed an action in Ramsey County District Court against the Department's investigator in April 2011 and before this proceeding was commenced on the grounds that the investigation was somehow unlawful. On October 12, 2011, the court, dismissed Respondents' complaint for failure to state a claim upon which relief could be granted. Respondents did not appeal. The Court's order is final. Exs. 62-63.

²³⁹ Minn. Stat. § 326B.33, subd. 12(a) (2010); see also 2007 Minn. Laws, ch. 140, art. 5, § 20.

11. Electrical work means the installing, altering, repairing, planning, or laying out of electrical wiring, apparatus, or equipment for electrical light, heat, power, technology circuits or systems, or other purposes.²⁴⁰

12. Minn. Stat. § 326B.33, subd. 2(a)(2)(i), requires all journeyman electricians to be an employee, partner or officer of the licensed contractor. Likewise, Minn. R. 3800.3500, subp. 3 defines an employee as “an individual whose compensation for electrical work is reported by the employer on an Internal Revenue Service W-2 form, and is also otherwise considered an employee under applicable laws”

13. The Department has proved by a preponderance of the evidence that Respondents allowed unlicensed, unregistered individuals, namely Brian Barrett, Matthew Barrett and Gabriel Smith, to perform electrical work on behalf of Respondents, and, moreover, oftentimes without any direct supervision by an individual employed by Respondents. Respondents therefore demonstrated incompetence or untrustworthiness in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (9); 326B.33, subd. 12(a) (2010); and 326B.31, subd. 16.

14. Respondents routinely misled their customers (and their customers’ insurers) about the cause, extent, and scope of purported electrical problems through statements and tests that are not supported by electrical and scientific principles, including a heavy reliance on voltage drop. Similarly, Respondents’ misrepresented that insurance companies were obligated to provide coverage to repair residential electrical systems based on the readings of a voltage drop test.

15. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test Eckman’s electrical system in conformity with accepted standards; that Respondents failed to secure the applicable permit to perform the work on Eckman’s property before commencing work; grossly understated the value of AMSE’s work; failed to call for the inspection; and that Respondents grossly overcorrected any actual insured loss, provided deficient workmanship, and improperly passed the expense onto Eckman and State Farm. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

16. The Department has proved by a preponderance of the evidence that, even though they billed and received \$262 for “permit fees,” Respondents failed to secure any permits or inspections for the work they performed on Harker’s and Andre’s properties. Respondents therefore performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(9).

²⁴⁰ Minn. Stat. § 326B.31, subd. 17.

17. The Department proved by a preponderance of the evidence that Respondents failed to competently or correctly test the Piharts' electrical system in conformity with accepted standards, their work on the property was not in conformity with accepted standards of construction for safety to life and property, that Respondents falsely warned of catastrophic loss if additional work was not immediately performed, and that Respondents failed to submit the request for inspection form to the State until after they already completed the work. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (8)-(9), 326B.35, and 326B.36, subd. 4.

18. The Department proved by a preponderance of the evidence that Respondents failed to secure any permits or inspections on the work they performed on Xiong's and Vang's property. Respondents therefore performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(9).

19. The Department proved by a preponderance of the evidence that Respondents failed to competently or correctly test Wheaton's electrical system in conformity with accepted standards, resulting in a misdiagnosis which was unsubstantiated by recognized scientific principles. Respondents substantially overcharged State Farm for their work, which was not performed in conformity with accepted standards of construction for safety to life and property. Respondents therefore performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (9), and 326B.35.

20. The Department proved by a preponderance of the evidence that Respondents failed to competently or correctly test Meier's electrical system in conformity with accepted standards, and the extensive scope of work on the property was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents also failed to submit the request for inspection form to the State until after they had already completed the work. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (8)-(9), and 326B.36, subd. 4.

21. The Department proved by a preponderance of the evidence that Respondents failed to competently or correctly test Williams' electrical system in conformity with accepted standards, and the extensive scope of work on the property was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents failed to secure any permits or inspections on the work until after they had already completed the work and understated the value of their work on the permit application, resulting in underpayment of the inspection fee. Respondents therefore engaged in deceptive or dishonest practices, or performed work

in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

22. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test the Masons' electrical system in conformity with accepted standards and, as such, their assessment of the scope of damage was unsubstantiated by recognized scientific principles. Respondents also failed to submit the request for inspection form to the State until after they had already completed the work. Respondents therefore performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (9); and 326B.36, subd. 4.

23. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test Miller's electrical system in conformity with accepted standards, and the extensive scope of work on the property was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents also failed to submit the request for inspection form to the State until after they had already completed the work, understated the value of their work on the permit application, and overcharged Miller for the permit. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility., all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (8)-(9), and 326B.36, subd. 4.

24. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test Feng's and Miao's electrical system in conformity with accepted standards to diagnose any purported problems. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(8)-(9).

25. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test Gatzlaff's electrical system in conformity with accepted standards to diagnose any purported problems, and recommended substantial and unnecessary repairs based on their misdiagnosis. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(8)-(9).

26. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test the Taylors' electrical system in conformity with accepted standards, and the extensive scope of work on the property was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents also failed to secure any permits or inspections on the work until after they had already completed the work, and understated the value of their work on the permit application. Respondents therefore engaged in deceptive or

dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

27. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test Rising's electrical system in conformity with accepted standards, and the extensive scope of work on the property was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents also billed for work that they did not perform and failed to secure any permits or inspections on the work until after they had already completed the work. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

28. The Department has proved by a preponderance of the evidence that Respondents failed to competently or correctly test the Farleys' electrical system in conformity with accepted standards, and the scope of work on the property was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents also failed to submit the request for inspection form to the State until after the work was complete, refused to comply with the homeowner's directive to stop working until the home could be inspected, altered an invoice after it was signed by the homeowner, and acted in an unprofessional and belligerent manner. Respondents therefore engaged in deceptive or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (8)-(9), and 326B.36, subd. 4.

29. The Department has proved by a preponderance of the evidence that Respondents conducted business in the name of another and created invoices using another electrician's name on Affeldt's project in an attempt to conceal their involvement on an insurance claim. Respondents also failed to secure any permits or inspections on the work, even though they charged the homeowner a permit fee. Respondents therefore engaged in fraudulent, deceptive, or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

30. The Department has proved by a preponderance of the evidence that Respondents conducted business in the name of another and created invoices using another electrician's name on Wise's project in an attempt to conceal their involvement on an insurance claim. Respondents failed to competently or correctly test Wise's electrical system in conformity with accepted standards, the scope of their work was overcharged, unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles, and the work performed was not in conformity with accepted standards of construction for safety to life and property. Respondents also failed to secure any permits or inspections on the work. Respondents therefore engaged in fraudulent, deceptive, or dishonest practices or performed work in connection with their licenses

which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(1) and (8)-(9), and 326B.35.

31. The Department has proved by a preponderance of the evidence that Respondents conducted business in the name of another and created invoices using another electrician's name on Montain's project in an attempt to conceal their involvement on an insurance claim. Moreover, Respondents failed to competently or correctly test Montain's electrical system in conformity with accepted standards, and the proposed scope of work on the property was unnecessary, misdiagnosed or unsubstantiated by recognized scientific principles. Respondents therefore engaged in fraudulent, deceptive, or dishonest practices, or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

32. The Department has proved by a preponderance of the evidence that Respondents conducted business in the name of another and created invoices using another electrician's name on the Noethes' project in an attempt to conceal their involvement on an insurance claim. At least a portion of the work that Barrett claimed to have performed was not completed or was overstated. Respondents therefore engaged in fraudulent, deceptive, or dishonest practices or performed work in connection with their licenses which demonstrates incompetence, untrustworthiness, or financial irresponsibility, all in violation of Minn. Stat. § 326B.082, subd. 11(b)(8)-(9).

33. The fact-finder may draw adverse inferences from Respondents' invocation of the privilege against self-incrimination. "[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." *Parker v. Henn. County Dist. Court*, 285 N.W.2d 81, 83 (Minn. 1979), quoting *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); see also *Pagel, Inc. v. S.E.C.*, 803 F.2d 942, 946-47 (8th Cir. 1986) (administrative agency did not err in taking adverse inference into account when weighing evidence).

34. While the Department is entitled to draw an adverse inference against Respondents based on their refusal to testify, on this evidentiary record the ALJ concludes it is unnecessary to support the penalties and allegations of violations set forth in the Licensing Order.

35. The Commissioner may suspend or revoke a personal license if the Commissioner finds that the person has committed one or more violations of applicable law.²⁴¹

²⁴¹ Minn. Stat. § 326B.082, subd. 11(b)(1) (2010); see also Minn. Stat. § 326B.081, subd. 3 (2010) (defining "applicable law").

36. A licensing order may include an assessment of monetary penalties of up to \$10,000 per violation for each violation or act, conduct, or practice committed by the person.²⁴²

37. In determining the amount of the penalty assessed against any person, the Commissioner shall take the following factors into account: the willfulness of the violation; the gravity of the violation, including damage to humans, animals, and the natural resources of the state; the history of past violations; the number of violations; the economic benefit gained by the person by allowing or committing the violation; and other factors that justice may require.²⁴³ The penalty assessment set forth in the Licensing Order is reasonable based on these factors.

Based on the above Conclusions, and for the reasons expressed in the Memorandum attached hereto, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED THAT: the Commissioner affirm in part and modify the Licensing Order issued to Respondents' as follows:

1. **Affirm** the revocation of All Main Street Electric's Electrical Contractor License No. CA03522; and
2. **Affirm** the revocation of Timothy Barrett's Master A Electrician License No. AM00285; and
3. **Reverse** the revocation of Timothy Barrett's Journeyman A Electrician License No. AJ00458; and
4. **Affirm** imposition of the \$30,000.00 monetary penalty assessed against All Main Street Electric and Timothy Barrett; and
5. **Affirm** the cease and desist order against All Main Street Electric, or any successor from doing business in any other business name, to cease and desist from offering or performing electrical work that requires state licensure or registration in the State of Minnesota; and

²⁴² Minn. Stat. § 326B.082, subd. 12(b) (2010).

²⁴³ Minn. Stat. § 326B.083, subd. 1 (2010); Minn. Stat. § 14.045, subd. 3 (2010)

6. **Issue** a cease and desist order against Timothy Barrett, individually or doing business in any other business name, to cease and desist from offering or performing electrical work that requires state licensure as a Master Electrician or Electrical Contractor in the State of Minnesota.

Dated: June 7, 2012

s/M. Kevin Snell

M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Ken Peterson, Commissioner, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155 (651) 284-5126 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Burden of Proof Met by the Department

The Department proved all of the material factual allegations by a preponderance of the evidence except one. The one allegation not proven, that Respondents fraudulently held themselves out as Layton Electric, is discussed below. One reason

that the Department was successful on 22 of 23 counts is the fact that Mr. Barrett declined to testify on cross-examination by the Department, invoking his right against self-incrimination under the Fifth Amendment to the Constitution. The Administrative Law Judge did not require him to take the stand, but advised him that adverse inferences could be drawn from his refusal to testify. On this record, however, it is not necessary to draw any adverse inferences to establish the facts or reach the conclusions made.

Notwithstanding the spirited cross-examination of the many Department witnesses by Mr. Barrett, the ALJ found that their testimony was credible in all material respects. The three highly qualified experts called by the Department each testified to a reasonable degree of scientific certainty with regard to their professional examinations and opinions. They were credible and knowledgeable witnesses. Messrs. Choudek and Archambault, both private consultants, were unpaid for their appearances at the hearing except for the statutory witness fees.

Although they had the opportunity and intention to call expert witnesses, Respondents did not do so.

Accommodations for Respondents as *Pro Se* Parties

Although some accommodations may be made for unrepresented parties, “*pro se* litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. Ct. App. 2001); see also Minn. R. 1400.5800 (2011) (“Persons appearing in contested case proceedings in a representative capacity must conform to the standards of professional conduct required of attorneys before the courts of Minnesota”).

The ALJ gave Mr. Barrett substantial latitude during the hearing with regard to his cross-examination of the Department’s witnesses as well as the direct examination of his witnesses. However, the ALJ did have to admonish Mr. Barrett from time to time when their content became testimonial or argumentative. Mr. Barrett’s trial skills and conduct in the hearing improved in a linear fashion as the hearing progressed from day to day. By the end of the first week and during the second week of the hearing, Mr. Barrett’s conduct was professional and he no longer allowed his frustrations to progress to anger.

However, despite clear instructions to the contrary at the close of the hearing, Respondent’s post hearing submissions contained new evidence. The evidentiary record closed at the end of the hearing. The Department correctly argued that evidence outside of the record cannot be considered by the ALJ or the Commissioner.²⁴⁴ The

²⁴⁴ See, Minn. Stat § 14.60, subd. 2 (no factual information or evidence may be considered unless it is part of the hearing record); Minn. R. 1400.7300, subps. 1 and 2 (2011)(no factual information or evidence shall be considered other than the evidence offered and made part of the hearing record); Minn. R. 1400.7800, subp. H (2011)(all evidentiary testimony shall be under oath or affirmation); Minn. R. 1400.8100, subp. 1 (no information outside the record may be considered by the ALJ or the agency); *In re Excess Surplus of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001) (no

new evidence in those briefs was not considered by the ALJ in his review and determinations in this matter.

Business Arrangements Between Respondents and Others

There is only one relevant factual issue alleged by the Department that was not proved by a preponderance of the evidence. That is whether or not Respondents and Chris Layton and/or LEI had entered into a business arrangement of some kind.

Respondents argue that they were in partnerships, separately, with Mr. Layton and Mr. Habel. While there were some type of arrangements between the Respondents and Layton and Habel, they did not rise to the level of partnerships. Even though there was no written agreement between Respondents and Mr. Habel, Habel admitted that there was an arrangement and that he considered that arrangement to be a “lead finder” agreement.²⁴⁵ Habel and others testified that he and Respondents worked together on at least two jobs.

Mr. Layton provided multiple affidavits to the Department and testified at the hearing that he did not authorize Respondents to conduct business in the name of LEI and that he never received any money for these projects. Aside from the one e-mail chain, there was no formal written document memorializing an arrangement between Respondents and Layton. However, there is affirmative evidence as to the existence of a business relationship between Layton and Respondents. Mr. Imgrund testified that he saw Layton at several of the projects at issue, although he did not have personal knowledge about any of the details of the business relationship. Even though Imgrund has enjoyed a 20 year long mutually beneficial business relationship with Respondents in his capacity as a drywall contractor, the ALJ finds that his testimony was credible. The ALJ concludes, notwithstanding Layton’s attestations and testimony to the contrary, that Layton and Respondents had a business arrangement. Mr. Layton’s testimony denying the existence of an arrangement with Respondents is not credible, particularly in light of the fact that there is reliable evidence in the record that Layton and Respondents worked together on multiple electrical repair jobs. The e-mail chain between Barrett and Layton and the testimony of Mr. Imgrund makes it clear that there was an agreement. The fact that Layton received no money under the agreement may mean that the agreement was breached, but it does not mean that the agreement did not exist. Contrary to the Department’s argument and Layton’s testimony by affidavit and at the hearing, there was an agreement of some type. While the ALJ concludes that these arrangements may have been entered to avoid scrutiny by State Farm, they did not rise to the level of fraudulent activity.

evidence not previously agreed to may be submitted after the record closes); *In re the Residential Building Contractor License of Lemaster Restoration, Inc.*, 2011 WL 2437463, *5 (Minn. Ct. App. 2011), *rev, denied* (Minn. 2011) (affirming Commissioner’s decision to consider new evidence submitted with exceptions letter).

²⁴⁵ Finding 152.

Summary of Respondents' Services to Homeowners

The entire record suggests that Respondents provided prompt, effective, necessary and valuable emergency services to residential homeowners. Respondents were the only electricians that answered their phone in person and immediately dispatched electricians to restore electrical services after a lightning strike. The problems arose from a legal and business standpoint after that initial service call.

Substantial evidence in the record establishes that Respondents were unhappy with State Farm's scrutiny of their electrical repair work. After being put on notice by State Farm in May 2010 that it expected to be notified before additional work would be done by Respondents,²⁴⁶ Respondents sought to cloak their involvement in electrical repairs related to State Farm Insurance claims.

Respondents were typically called by the homeowners in this case under urgent circumstances when their homes sustained some type of electrical failure. In general, these homeowners -- who were sequestered during the hearing and were complete strangers to each other -- testified that: (a) they did not have any specialized knowledge in electricity; (b) Respondents claimed that an electrical event such as lightning or other service interruption caused voltage drop; (c) they relied upon Respondents' representations, recommendations, and experience as to the cause, extent, and threat of the alleged damage; (d) Respondents represented that the scope of their work would be covered by homeowner's insurance; (e) they did not anticipate paying anything other than their insurance deductible; and (f) except for two homeowners,²⁴⁷ would not recommend Respondents' services to anyone, based on their overall negative experiences. Respondents offered scant evidence to rebut the homeowners' descriptions of Respondents' business practices, which constitute a distinct pattern of questionable conduct.

Respondent's Constitutional Arguments

Respondents raised a number of constitutional claims and defenses. However, as the Department correctly argued: an Administrative Law Judge is without authority to pass on or consider a constitutional claim. The Minnesota Court of Appeals recently stated:

The law does not permit an ALJ to address constitutional issues because a constitutional challenge is a controversy that requires judicial interpretation.²⁴⁸

²⁴⁶ Finding 143.

²⁴⁷ Mr. Williams and Mr. Mound.

²⁴⁸ *In re On-Sale Liquor License, Class B*, 763 N.W.2d 359, 371 (Minn. App. 2009). See also, *In re the Risk Level Determination of CM*, 578 N.W.2d 391 (Minn. App. 1998); *Neeland v. Clearwater Mem'l Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977); *Padilla v. Minn. Stat B. of Med. Exam'r*, 382 N.W.2d 876, 882 (considering constitutional due process issues after an administrative hearing).

The Administrative Law Judge is without authority to address the constitutional claims the Respondents have raised in this proceeding.

Respondents' Other Arguments

During their opening statement and post hearing briefs, Respondents present a number of arguments, including: the Department pursued Respondents and Barrett's sons and son-in-law on an unjustified vendetta to strip them of their livelihoods; and the Department treats non-union electricians less favorably than union electricians. These arguments are without merit because they are unsupported by any evidence in the record, and are without any legal basis.

Conclusion

The ALJ concludes that the Licensing Order should be affirmed in part, and reversed in part. Most of Respondents' difficulties relate to questionable business practices that led them to this point. The remainder relate to lack of fundamental knowledge of some electrical principles. The latter was suggested both by Respondents' persistent inappropriate use of the Sure Test meter and from questions by Barrett in his cross-examination of the Department's expert witnesses. The decisions relating to marketing, contracting, supervision, and billing are the type of decisions made pursuant to a Class A Electrical Contractor license or a Master Electrician's license.

Mr. Barrett's 30 years of experience could and should be best utilized as a non-supervisory employee of a licensed Master Electrician and/or licensed Electrical Contractor. The Department should impose limitations on his Journeyman's license until after he has successfully completed refresher courses on catastrophic electrical events, the scope of necessary examination, and correct diagnoses for necessary repairs.

The ALJ respectfully recommends to the Commissioner that Barrett's Class A Journeyman Electrician license be renewed on a limited basis, his Class A Master Electrician license and AMSE's Class A Electrical Contractor licenses be revoked, and that the remainder of the Licensing Order, including the civil penalties, be affirmed.

M. K. S.